TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 548.

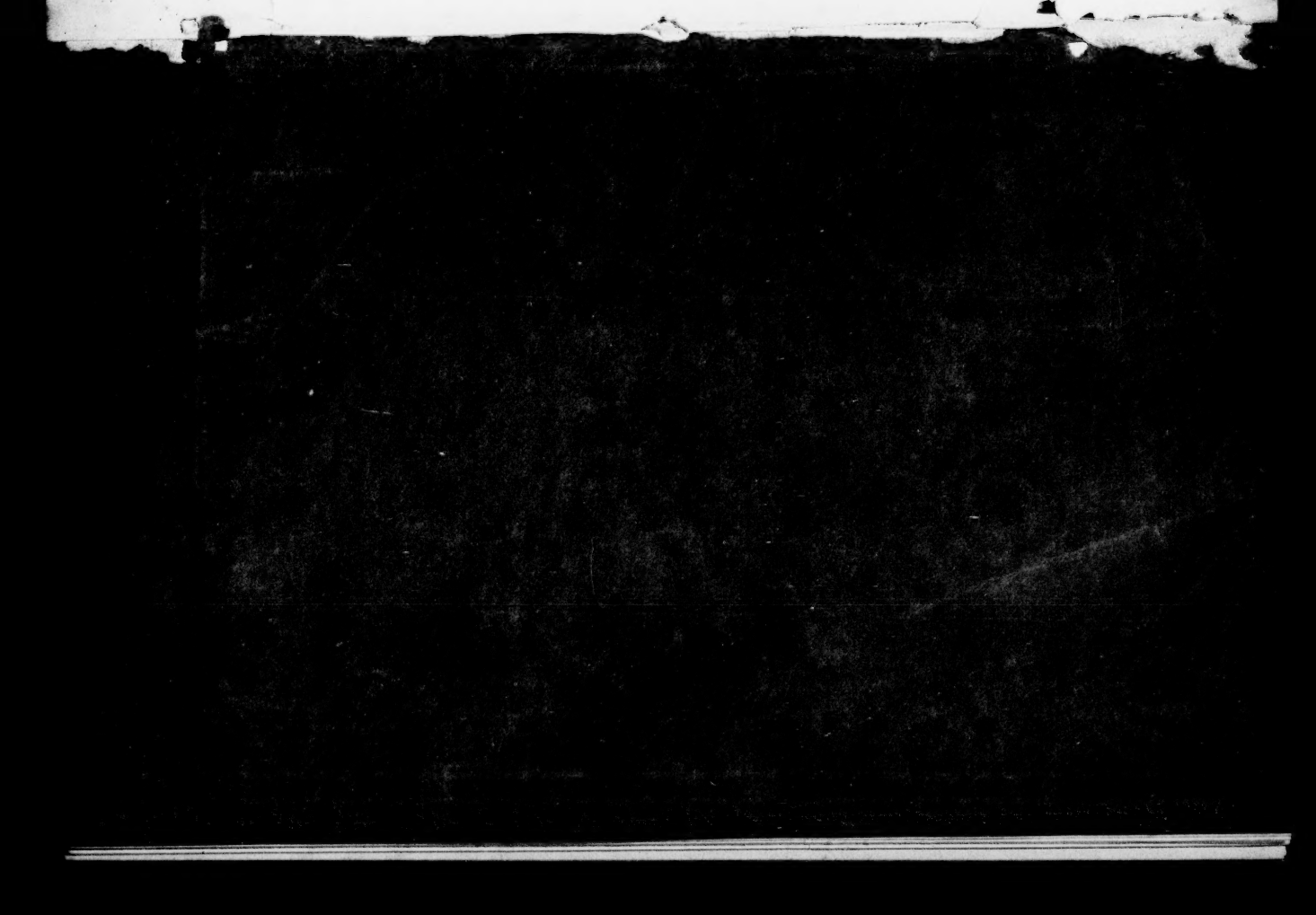
THE ERIE RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

FILED OCTOBER 6, 1874.



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1 The answer of the justices of the supreme court of Pennsylvania to the writ of error from the Supreme Court of the United States, hereunto annexed, as follows, to wit:

2 Among the records of the court of common pleas of Dauphin County, Pennsylvania, to April 3, 1874, No. 77, it is contained as follows, to wit:

Docket entry.

Dimmick. Simonton.

COMMONWEALTH OF PENNSYLVANIA } 77.
vs.
THE ERIE RAILWAY COMPANY. }

Appeal by defendant from the settlement of the auditor-general & State treasurer.

Feb'y 3, 1874.—Narr. and copy of account filed.

Feb'y 4, 1874.—Defendant pleads "nil debit and payment with leave," &c.

March court, 1874, (I. L.) And now, to wit, March 24, 1874, trial ordered, jury called, came, &c., twelve good and lawful men of the county of Dauphin, duly selected, summoned, returned, &c., all of whom, being duly sworn or affirmed according to law, do say—

March 24, 1874, that they find in favor of the plaintiff the sum of seventy-six thousand seven hundred and eighty-eight & $\frac{20}{100}$ dollars, ($76,788.20.)

April 13, 1874.—Judgment on the verdict.

May 7, 1874.—Writ of error from the supreme court received and filed.

3 May 14, 1874.—Charge and points, with the answers, filed.

DAUPHIN COUNTY, *ss:*

Certified from the record.
May 15, 1874.
{ SEAL OF THE COURT OF C. P. OF DAUPHIN CO. } THOS. G. FOX, *Pr'th'y.*

4 COMMONWEALTH OF PENNSYLVANIA }
vs.
THE ERIE RAILWAY COMPANY. }

Specifications of objections to the settlement of the auditor-general and State treasurer of the State of Pennsylvania against the Erie Railway Company for tax on gross receipts.

In the matter of the account settled by the auditor-general and State treasurer of the State of Pennsylvania, on the 31st day of December, A. D. 1873, between the Commonwealth of Pennsylvavia and The Erie Railway Company, for taxes claimed to be due to the said Commonwealth upon the gross receipts of said company from the 1st day of May, 1868, to the 30th day of June, 1873, under the provisions of the act of the general assembly of the State of Pennsylvania, approved

May 1, 1868, entitled "An act to revise, amend, and consolidate the several laws taxing corporations, brokers, and bankers."

The said The Erie Railway Company hereby appeals from said
5 settlement, a copy of which is hereto annexed to the court of common pleas of Dauphin County, in the State of Pennsylvania, as authorized by act of assembly in such case made and provided, and specifies the following objections to said settlement:

1. The eighth section of the said act of May 1, 1868, under which said settlement was made, does not apply, and was not intended to apply, to the said Erie Railway Company, because the said company is not doing business in the State on Pennsylvania in the sense intended by said act, but is, as to nearly all of the freight from the transportation of which said gross receipts accrued, merely using the right of way through a small portion of the territory of Pennsylvania, which it purchased from, and pays for to, said State.

2. The said section of said act of May 1, 1868, so far as it may be held applicable to said The Erie Railway Company, or to the tax charged against said company in respect of the gross receipts from its main
6 line, in said settlement is repugnant to the Constitution of the United States, because it impairs the obligation of the contract entered into between the State of Pennsylvania and said company by the enactment and acceptance by said company of the act of assembly of said State, approved February 16, 1841, entitled "An act to authorize the New York and Erie Railroad Company to construct said road through a portion of Susquehanna County, in the State of Pennsylvania," and the several supplements thereto, to wit:

(1.) An act entitled "A supplement to an act entitled 'An act to authorize the New York and Erie Railroad Company to construct said road through a portion of Susquehnana County, in the State of Pennsylvania,' passed the sixteenth day of February, one thousand eight hundred and forty-one," approved the twenty-sixth day of March, A. D. 1846.

(2.) An act approved the first day of April, A. D. 1848, entitled "A supplement to an act entitled 'A supplement to an act entitled 'An act to authorize the New York and Erie Railroad Company to construct said railroad through Susquehanna County.'"

7 (3.) An act approved the fourteenth day of April, A. D. 1851, entitled "An act regulating the licensing of beer-houses and houses to sell liquors in the counties of Susquehanna and Wyoming; relative to the New York and Erie Railroad; to change the name of the Legget's Gap Railroad Company, and to the release of Christian Harlensen as one of the sureties of Jacob Sallade, late surveyor-general."

(4.) An act approved the eleventh day of March, A. D. 1852, entitled "An act to incorporate the East Liberty, North Washington and Apollo Plank-Road Company; relating to the claim of Alexander McConnell to the Buck Mountain Coal Company, and to the New York and Erie Railroad."

(5.) An act approved the twenty-eighth day of April, A. D. 1852, entitled "A supplement to the act incorporating The Washington National Insurance Company of Philadelphia; relative to the Junction Canal Company; to the sale of real estate by O. P. Ballard, and to the sale of lands by the New York and Erie Railroad Company."

(6.) An act approved the eighteenth day of April, A. D. 1853, entitled "An act extending the time for the commencement of the Athens
8 and Ithaca Railroad; relative to the New York and Erie Railroad Company, and relative to Christian street, in the district of Moyamensing, Philadelphia County."

(7.) An act approved the twenty-seventh day of April, A. D. 1855, entitled "A supplement to an act incorporating the Washington National Insurance Company of Philadelphia; relative to the Junction Canal Company; to the sale of real estate by O. P. Ballard, and to the sale of lands by the New York and Erie Railroad Company."

(8.) Resolutions of the said legislature, approved the twenty-seventh day of March, A. D. 1855, entitled "Resolutions relative to the New York and Erie Railroad Company."

(9.) An act approved the twenty-second day of March, A. D. 1860, entitled "An act relating to the New York and Erie Raidroad Company;" all of which acts are in evidence in this case.

3. The said State of Pennsylvania having, by said act of 1841 and the said several supplements thereto, prescribed for and imposed upon said company a special rate of taxation, which is still imposed and exacted, cannot, in addition thereto, exact from said company the taxes which are imposed upon her own corporation by general laws,
9 and so to do would impair the obligations of the said contract between said State and said company.

4. Said section of said act of May 1, 1868, does not apply to said company, because the annual tax of ten thousand dollars imposed upon the company by the fifth section of the act of March 27, 1846, was intended to compensate the Commonwealth for the right of way through her territory, and that the tax imposed by the sixth section of said act upon that portion of the company's stock which represents the cost of construction in Pennsylvania was meant to be in lieu of all other taxation of the property of the company within the State of Pennsylvania.

5. That said section of the said act of May 1, 1868, so far as it is or may be held to authorize the imposition of the tax charged upon the gross receipts of said company, derived from their business of the main line, as charged in said settlement, or of the interest and penalties charged in respect of the same, is unconstitutional and void because repugnant to the Constitution of the United States.

10 Witness the corporate seal of said company, duly attested, this 26th day of January, A. D. 1874.

{ SEAL OF THE CO. } THE ERIE RAILWAY COMPANY,
By L. ROBINSON, *Acting Prest.*

Attest:

A. R. MACDONOUGH,
Secretary.

(Endorsed:) No. 77. April 3, 1874. Comm'e'th of Penna. vs. Erie Railway Co. Appeal &c. Filed Jan'y 30, 1874.

11 *Erie Railway Company in account with the Commonwealth of Pennsylvania, Dr.*

For tax on gross receipts, per act of May 1, 1868, to June 30th, 1873, as per report herewith filed:

1868. (8 mos.) Gross receipts from branches in Penna		$188,569 91	
" " from main line $6,190,797.07, $\frac{42}{45}$ parts representing proportion of main line in State of Penna		591,255 90	
Tax $\frac{3}{4}$ of one per cent. on		779,825 81	5,848 69
Add 10 per cent., per act May 1, 1868			584 86

	Interest on $5,848.69 from Jany. 1, 1869, to Dec. 31, 1873		3,509 21
1869.	Gross receipts from Penna. branches	271,029 64	
	" " " main line, 9,266,-340.53. Proportion in Penna. as above	884,988 38	
	Tax ¾ of one per cent. on	1,156,018 02	8,670 14
	Add 10 per cent., per act May 1, 1868		867 01
	Interest (averaged) from Oct. 1, 1869, to Dec. 31, 1873		4,421 77
1870.	Gross receipts from Penna. branches	395,648 07	
	" " " main line, $9,714,-921.83. Proportion in Pennsylvania	927,829 57	
	Tax ¾ of one per cent. on	1,323,477 64	9,926 08
	Add 10 per cent., per act May 1, 1868		992 60
	Interest (averaged) from Oct. 1, 1870, to Dec. 31, 1873		3,871 17
1871.	Gross receipts from Penna. branches	371,163 19	
	" " " main line, $10,-097,017.99. Proportion in Pennsylvania	964,321 94	
	Tax ¾ of one per cent. on	$1,335,485 13	10,016 14
	Add 10 per cent., per act May 1, 1868		1,001 61
	Interest (averaged) Oct. 1, 1871, to Dec. 31, 1873		2,704 35
1872.	Gross receipts from Penna. branches	557,904 55	
	" " " main line, $9,634,-542.84. Proportion in Pennsylvania	920,153 05	
	Tax ¾ of one per cent. on	$1,472,057 60	11,040 43
	Add 10 per cent., per act May 1, 1868		1,104 04
	Interest (averaged) from Oct. 1, 1872, to Dec. 31, 1873		1,656 06
1873.	(6 mos.) Gross receipts from Penna. branches	274,642 91	
	" " " main line, $4,866,733.72. Proportion in Pennsylvania	464,800 40	
	Tax ¾ of one per cent	739,443 31	5,545 83
	Add 10 per cent., per act May 1, 1868		554 58
	Interest from July 1, 1873, to December 31, 1873		332 74
	Due Commonwealth		$72,647 31

AUDITOR-GENERAL'S OFFICE,
Harrisburg, Dec. 31st, 1873.

Settled and entered:

HARRISON ALLEN,
Auditor-General.

TREASURY OFFICE, PA.,
Harrisburg, December 31st, 1873.

Approved:

W. B. HART,
For R. W. MACKEY,
State Treasurer.

AUDITOR-GENERAL'S OFFICE,
Harrisburg, January 2, 1874.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and seal of office the day and year aforesaid.

SEAL OF AUD.-GENL'S OFFICE.

HARRISON ALLEN,
Auditor-General.

12 In Dauphin common pleas, No. 77, April term, 1874.

DAUPHIN COUNTY, *ss:*

The Commonwealth of Pennsylvania, by her attorney-general, complains of The Erie Railway Company of a plea, that they render unto the said Commonwealth the sum of one hundred thousand dollars, lawful money of the United States, which they owe to and unjustly detain from her. For that whereas the said defendants, on the thirty-first day of December, A.D. 1873, at the county of Dauphin aforesaid, were indebted to the said plaintiff in the sum of seventy-two thousand six hundred & forty-seven $\frac{31}{100}$ dollars, lawful money of the United States, on an account examined, adjusted, settled, and signed by the auditor-general of this Commonwealth, and duly entered in the books of his office, as authorized and required by law, on the day and year last aforesaid, in which a certain sum of money, to wit, the sum last aforesaid, is due and owing the said plaintiff from the said defendants, with interest thereon, at the rate of twelve per centum per annum, from and after the expiration of two months from the day upon which the said account was so as aforesaid examined, adjusted, settled, and signed by the auditor-general of this Commonwealth, for tax on gross receipts, per act of 1 May, 1868, from May 1, 1868, to 30th June, 1873, which said account was, on the 31st day of December, A. D. 1873, submitted to, revised, and approved by, the State treasurer, and a copy thereof, within thirty days thereafter, sent by the said auditor-general, under his hand and seal of office, to the said defendants, and which yet remains in full force against said defendants and unappealed from; whereby, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from the said defendants a certain sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth, in the said account so as aforesaid examined, adjusted, settled, and signed by the auditor-general of this Commonwealth, parcel of the said sum above demanded. And being so indebted, the said defendants afterwards, to wit, on the day and year aforesaid, at the county aforesaid, promised to pay to the said plaintiff, on request, the said last-mentioned sum of money.

And whereas, also, the said defendants, on the day and year in the first count first mentioned, at the county aforesaid, were indebted to the said plaintiff in a certain further sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account in the first count mentioned, for money then and there had and received by the said defendants, to and for the use of the
13 plaintiff. And, also, a certain further sum of money, to wit, the sum last aforesaid, on an account settled and entered by the auditor-general of this Commonwealth against the said defendants, on the day and year in the first count mentioned, for tax on gross receipts, and approved by the State treasurer on the day and year in the first count mentioned.

And whereas, afterward, to wit, on the day and year last aforesaid, at the county aforsaid, the said defendants, in consideration of the premises, promised to pay the two last-mentioned several sums of money respectively to the said plaintiff on request. Yet the said defendants have disregarded their said promises, and although often requested so to do, have not as yet paid any of the said several sums of money, or any part thereof, to the damage of the said plaintiff of one hundred thousand dollars, and therefore she brings suit, &c.

SAMUEL E. DIMMICK,
Attorney-General,
By LYMAN D. GILBERT,
Deputy Attorney-General.

(Endorsed:) No. 77. April term, 1874. Commonwealth of Pennsylvania vs. Erie Railway Company. Narr. and copy of account. Filed February 3, 1874.

14 *Erie Railway Company in account with the Commonwealth of Pennsylvania, Dr.*

For tax on gross receipts, per act of May 1, 1868, from May 1, 1868, to June 30, 1873, as per report herewith filed.

1868.	(8 mos.) Gross receipts from branches in Penna	$188,569 91	
	" " " main line, $6,190,797.07, $\frac{42}{455}$th parts representing proportion ot main line in State of Penna	591,255 90	
	Tax $\frac{3}{4}$*ths* of one per cent. on	779,825 81	5,848 69
	Add 10 per cent., per act May 1, 1868		584 86
	Interest on $5,848.69 from Jan'y 1, 1869, to Dec. 31, 1873		3,509 21
1869.	Gross receipts from Penna. brances.	271,029 64	
	" " " main line, 9,266,349.53. Proportion in Penna. as above	884,988 38	
	Tax $\frac{3}{4}$*ths* of one per cent. on	1,156,018 02	8,670 14
	Add ten per cent., per act May 1, 1868		867 01
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1870.	Gross receipts from Penna. branches,	395,648 07	
	" " " main line, 9,714,921.83. Proportion in Pennsylvania	927,829 57	
	Tax $\frac{3}{4}$*ths* of one per cent. on	1,323,477 64	9,926 08
	Add 10 per cent., per act May 1, 1868		992 60
	Interest (averaged) from Oct. 1, 1870, to Dec. 31, 1873		3,871 17
1871.	Gross receipts from Penna. branches.	371,163 19	
	" " " main line, $10,097,017.99. Proportion in Pennsylvania	964,321 94	

	Tax $\frac{3}{4}$*ths* of one per cent. on.....	1,335,485 13	10,016 14
	Add 10 per cent., per act May 1, 1868.....		1,001 61
	Interest (averaged) Oct. 1, 1871, to Dec. 31, 1873....		2,704 35
1872.	Gross receipts from Penna. branches.	551,904 55	
	" " " main line, 9,634,542.84. Proportion in Pennsylvania	920,153 05	
	Tax $\frac{3}{4}$ of one per cent. on.....	$1,472,057 60	11,040 43
	Add 10 per cent., per act May 1, 1868.....		1,104 04
	Interest (averaged) from Oct. 1, 1871, to Dec. 31, 1873		1,656 06
1873.	(6 mos.) Gross receipts from Penna. branches.....	$274,642 91	
	" " " main line, $4,866,733.72. Proportion in Pennsylvania.....	464,800 40	
	Tax $\frac{3}{4}$ of one per cent. on.....	$739,443 31	5,545 83
	Add 10 per cent., per act May 1, 1868.....		554 58
	Interest from July 1, 1873, to Dec. 31, 1873.....		332 74
	Due Commonwealth.....		72,647 31

AUDITOR-GENERAL'S OFFICE,
Harrisburg, Dec. 31, 1873.

Settled and entered:

HARRISON ALLEN,
Auditor-General.

TREASURY OFFICE, PA.,
Harrisburg, December 31, 1873.

Approved:

W. B. HART,
For R. W. MACKEY,
State Treasurer.

AUDITOR-GENERAL'S OFFICE,
Harrisburg, January 2, 1874.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and the seal of office the day and year aforesaid.

HARRISON ALLEN,
Auditor-General.

15 THE COMMONWEALTH OF PENNSYLVANIA } In Dauphin Common Pleas. No. 77.
vs.
THE ERIE RAILWAY COMPANY. } April 3, 1874.

February 4, 1874.—Defendant pleads "nil debit and payment with leave," &c.

SIMONTON, *For Deft.*

16 THE COMMONWEALTH OF PENNA. *vs.* THE ERIE RAILWAY CO. } 99. April 3, 1874.

Appeal from settlement nil debit, pay't, &c.

Attorney-general reads act 16 Feb'y 1841, P. L., p. 28, (company authorized to come into this State,) as follows:

An act to authorize The New York and Erie Railroad Company to construct said road through a portion of Susquehanna County, in the State of Pennsylvania.

Whereas the legislature of the State of New York did, at their session of one thousand eight hundred and thirty-two, constitute a body-corporate by the name of "the New York and Erie Railroad Company," with power to construct a single, double, or treble railroad or way from the city of New York to Lake Erie through the southern tier of counties of said State.

Whereas it is represented that in one of said counties, to wit,
17 the county of Broome, bordering on the State of Pennsylvania, said company are opposed in the construction of said road by a mountain of such magnitude as to require tunneling, or to be surmounted by stationary power with immense expense to said company;

Whereas it is also represented that, by being permitted, in the construction of said road, to follow the valley of the Susquehanna River a distance of about fifteen miles in the neigborhood of and near to said county of Broome, (though within the State of Pennsylvania,) said company might enjoy the advantages of a level and easy route;

And whereas it is alike politic and just that amity between adjoining States in respect to their internal-improvement operations should be respected and maintained: Therefore,

SECTION 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same. That the New York and Erie Railroad Company, incorporated by the legislature of the State of New York, at their session of eighteen hundred and thir-
18 ty-two, shall have full power to extend their road through such portion of the county of Susquehanna as in the proper construction of their road they may find it necessary.

SECTION 2. The president and managers of said company shall have power to survey, lay down, ascertain, mark, & fix such route as they shall deem expedient for the extension or continuation of their said road, with single, double, or treble track, confining themselves to the said county of Susquehanna; and the said railroad shall not pass through any burial ground, place of public worship, or dwelling-house, without the consent of the owner, and the said company shall, within six months after ascertaining the route of said railroad, cause an accurate survey of the lines of said road to be made, a map or plot of which survey they shall cause to be filed in the office of the secretary of state, which map or plot, or certified copy thereof, shall be sufficient evidence of the route of said road, which may then be opened, & and all of the expenses thereof shall be defrayed by said company.

19 SECTION 3. That the said company shall have power, by themselves or agents, to enter in and upon such lands as may be necessary to make the railroad aforesaid, and also have liberty of taking from any land in the neighborhood gravel, stone, wood, or other mate-

rials necessary for the construction of said railroad, paying, if the owner of said land and said company can agree, the damages they shall do to said lands, or if they cannot agree thereon, the damages shall be ascertained in the manner hereinafter prescribed as to the compensation for injuries done said lands over which said railroad shall be laid.

SECTION 4. That whenever it shall be necessary for the said company to enter in and upon and occupy, for the purpose of making said railroad, any land upon which the same may be located, if the owner or owners of said lands shall refuse to permit such entry and occupation, and the parties cannot agree upon the compensation to be made for any injury or supposed injury that may be done to said land by such entry and occupation, then it shall be lawful for the court of common pleas of the county in which the land lies, on application of either party, and at the cost and charges of said corporation, to award a venire, directed to the sheriff of the county, requiring him to summon a jury of six disinterested men to view, examine, and survey the said lands, tenements, or hereditaments, and estimate the injury or damages, if any, that, in their opinion, will be sustained as aforesaid by reason of said railroad, and report the same, under their oaths and affirmations, to the said court, which report being confirmed by the said court, judgment shall be entered thereon, and the said sheriff and jurors shall be entitled to the like fees for their services as are allowed by law in other cases of special juries, to be paid by the said company. And it shall be the duty of the said jury, in estimating such injury or damages, to take into consideration the advantage that will be derived to the owner or owners of such lands from the construction of said railroad: Provided, That either party may appeal to the court within thirty days after such report shall have been filed in the prothonotary's office of the proper county, in the same manner as appeals are allowed in other cases; and upon the filing of such report or inquisition, and the confirmation thereof, or upon final judgment upon appeal therefrom, and the said paying to such owner the amount in said report or judgment specified in full compensation for the injury sustained as aforesaid, the said company shall have the right of way, and all other rights and privileges necessary to the full enjoyment of said road, over the lands which the owner held; and they, and all who act under them, shall be acquitted and freed from all responsibility for or on account of such injury: Provided, That the payment of damages aforesaid for the lands through which the said roadway be laid shall be made before the said company, or any person under their direction or in their employ, shall be authorized to enter upon or break ground in the premises, except for the purpose of surveying and laying out said road, unless the consent of the owner or owners be first obtained.

SECTION 5. That the said railroad shall be so constructed as not to impede or obstruct the free use or passage of any public road or roads which may cross or enter the same, and in all cases where the said railroad may cross or in any manner interfere with any existing public road, the said company shall make, or cause to be made, a good and sufficient causeway or causeways, to enable all persons, passing or travelling said public roads, to cross and pass under or over said railroad; and if the said company shall neglect or refuse to keep such way or causeways in good repair, they shall be liable to a penalty of ten dollars for every day the same shall be so neglected or refuse' to be repaired, to be recovered by the supervisors of the township, with costs, for the use of the township, as debts of the like amount are by law recoverable, and

shall, moreover, be liable to all actions at the suit of any person who may be aggrieved thereby.

SECTION 6. That for the accommodation of all persons owning
23 or possessing lands through which the said railroad may pass, it shall be the duty of the said company to make, or cause to be made, a good and sufficient causeway or causeways, wherever the same may be necessary, to enable the occupant or occupants of said lands to cross or pass over the same with wagons, carts, and implements of husbandry, as occasion may require; and the said causeway or causeways, when so made, shall be maintained and kept in good repair by said company, and if the said company shall neglect or refuse on request to make such causeway or causeways, or, when made, to keep the same in good order, the said company shall be liable to pay any person aggrieved thereby all damages sustained by such persons in consequence of neglect or refusal, to be paid for and recovered before any magistrate or court having cognizance thereof: Provided, That the said company shall in no case be required to make, or cause to be made, more than one causeway through each plantation or lot of land, for the accommodation of any one person owning or possessing land through
24 which said railroad may pass; and when any public road shall cross said railroad, the person owning or possessing land through which said public road shall pass shall not be entitled to require the company to erect or keep in repair any causeway or bridges for the accommodation of the occupant of said land.

SECTION 7. No suit or action shall be brought or prosecuted by any person or persons for any penalties incurred under this act, unless such suit or action shall be commenced within ten months next after the offence shall have been committed or the cause of action shall have accrued; and the defendant or defendants in such suit or action may plead the general issue and give this act & the special matter in evidence, & that the same was done in pursuance and by authority of this act.

SECTION 8. If any person or persons shall wilfully and knowingly break, injure, or destroy the railroad, or any part thereof, to be erected by the said company in pursuance of this act, he, she, or they shall forfeit & pay to the said company three times the actual damages
25 so sustained, to be sued for and recovered, with costs of suit, in any court having cognizance thereof, by action of debt, in the name and for the use of said company.

SECTION 9. That all suits or actions which may be brought against said company the service of process upon any manager, toll-gatherer, or other officer of the company, shall be as good and available in law as if made on the president thereof. And the said company shall at all times keep at least one manager, toll-gatherer, or other officer a resident in the county of Susquehanna.

SECTION 10. All transportation on said railroad, of whatever nature or kind, shall be carried on and conducted under the superintendence and direction of said company, who shall make rules for the regulation of all travelling & transportation on the same, and alter the same as they may deem expedient: Provided That, in the transportation of property or persons on said railroad, the citizens of this Commonwealth shall enjoy equal privileges with those of the State of New York.

26 SECTION 11. If any buildings, fences, timber, or other property situated in the county of Susquehanna shall be destroyed by fire occasioned by sparks falling from any locomotive-engines used upon the said road, the company shall be liable to make full compensation for all

damages in consequence of such fire; the damage thus sustained to be ascertained (where the parties cannot agree) in the same manner that other damages are ascertained and assessed, agreeably to the provisions of the fourth section of this act.

WM. A. CRABB,
Speaker of the House of Representatives.
CHARLES B. PENROSE,
Speaker of the Senate.

Approved the sixteenth day of February, A. D. 1841.
DAVID R. PORTER.

(The original name of the company was the New York & Erie Railroad Company, incorporated in 1832, by a law of New York, to make a road from city of New York to Lake Erie.)

27 Also, act 26 March, 1846, supplement to act 16 Feb'y, 1841, read, as follows:

A supplement to an act entitled "An act to authorize the New York and Erie Railroad Company to construct said road through a portion of Susquehanna county, in the State of Pennsylvania," passed the sixteenth day of February, one thousand eight hundred and forty-one.

SECTION 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same, that the act entitled "A supplement to an act entitled 'An act to authorize the New York and Erie Railroad Company to construct said road through a portion of Susquehanna County, in the State of Pennsylvania,' passed sixteenth of Feb'uary, eighteen hundred and forty-one," be, and it is hereby, amended so as to authorize the said New York and Erie Railroad Company to extend the line of their said railroad from a point near the village
28 of Port Jervis, in Orange County, State of New York, across the Delaware River, into the county of Pike, and thence up the valley and near the shore of said river, within the said county a distance not exceeding thirty miles, to a point not exceeding ten miles above the mouth of the Lackawaxen River, and thence to recross the Delaware River to the easterly side thereof, in the county of Sullivan, State of New York: Provided, That the said road shall recross the Delaware River into the State of New York not less than three nor more than ten miles above the mouth of the Lackawaxen River: And provided further, That it shall be so constructed on the Pennsylvania shore as not to impede or obstruct the Delaware and Hudson Canal Company in the erection of an aqueduct across the Delaware River at or near the mouth of the Lackawaxen: And provided further, That said road shall be so constructed as not to obstruct the rafting navigation, nor contract the natural flow and expansion of the said Delaware River at high
29 floods; nor shall the said railroad company, in any manner, disturb or injure the works, or impede the business of the Delaware and Hudson Canal Company: Provided, also, That the said New York and Erie Railroad shall cross the Delaware River into said county of Pike at some point between Carpenter's Point and the glass-house: Provided, also, That the said New York and Erie Railroad Company shall permit a connection at or near Carpenter's Point, in the county of Pike, with any railroad company now chartered or hereafter to be chartered by this State.

said county of Pike at some point between Carpenter's Point and Bolton Basin: Provided, That the New York and Erie Railroad Company shall, by the first day of October, in the year one thousand eight hundred and fifty-two, erect a permanent and substantial bridge across the river Delaware between Sim's Clip and the rope-ferry at Matamoras, with a double-track, one of which shall be suitable for laying a railroad track thereon; which bridge it shall be the duty of the said company forever thereafter to keep in good order and repair, and at which bridge they shall be entitled to charge and receive the same rate of tolls now charged at the bridge across the river Delaware at the borough of Easton; and whenever any company incorporated or to be incor-
37 porated in Pennsylvania shall construct a railroad to the abutment of said bridge, it shall be the duty of the said New York and Erie Railroad Company to connect such Pennsylvania railroad with the said New York and Erie Railroad by means of a branch railroad upon one of the tracks of the said bridge, and thence to their railroad at or near their depot at Port Jarvis, in the State of New York; which branch railroad, together with the said New York and Erie Railroad east and west of Carpenter's Point, shall be subject to all the provisions of the third section of the act of the twenty-sixth of March, one thousand eight hundred and forty-six, to which this is a supplement, including the prohibition of discriminating tolls: Provided, That no tolls shall be levied on passengers or freight transported in said railroad cars for passing over said bridge after the connection is made with any railroad hereafter to be constructed in Pennsylvania: Provided further, That in case any company incorporated in Pennsylvania for the purpose shall construct a railroad to the Delaware River between the points above
38 specified prior to the first day of October, one thousand eight hundred and fifty-two, then said New York and Erie Railroad Company shall forthwith commence, and, with all proper speed, construct said bridge and railroad.

SECTION 2. That the said New York and Erie Railroad Company shall, when said bridge is completed and in use, pay all damages done to private property, as well as any damage, immediate or consequential, which may be sustained by the owner of the rope-ferry at Matamoras, his heirs and assigns, in consequence of the construction of said bridge; the last-mentioned item in no event to exceed three thousand dollars; and, in case the parties cannot agree upon the amount, the same shall be ascertained and paid in the manner provided in the original act to which this is a supplement: Provided, That if the said New York and Erie Railroad Company shall neglect or refuse to comply with the provisions of this act, the Commonwealth of Pennsylvania reserves the right to assess and collect a tax of one dollar upon said company
39 for each passenger carried on the said New York and Erie Railroad in Pennsylvania, until a sum sufficient shall be so collected to construct the bridge provided by this act, as well as to pay all damage that may be done to private property as above provided for. And in case said company shall neglect or refuse to pay the tax hereby imposed, it shall be the duty of the canal commissioners of Pennsylvania to appoint a collector, and adopt such other measures as may be necessary to enforce such payment: Provided, also, That if the said company shall, at any time, neglect or refuse to comply with or carry out any of the provisions of this supplement, the legislature reserves the right to repeal the act of the sixteenth of February, one thousand eight hundred and forty-one, and all the supplements thereto; and, for the purpose of ascertaining whether there has been any such neglect or refusal, the

same proceedings shall be had as is provided in the seventh section of the supplement to which this is a further supplement: Provided further, That nothing in this act shall be construed to exonerate the
40 New York and Erie Railroad Company from the payment of the ten thousand dollars per annum to the Commonwealth of Pennsylvania, as required by existing laws.

WILLIAM F. PACKER,
Speaker of the House of Representatives.
WM. WILLIAMSON,
Speaker of the Senate.

Approved the first day of April, one thousand eight hundred and forty-eight.

FR'S R. SHUNK.

41 It is agreed that the New York & Erie Railroad Company was sold many years since, and its corporate name was changed to the New York and Erie Railway Company.

State of Penna., by act 22 March, 1860, agreed that the change be made, and the company hold the same privilege in this State. (See Pamph. Laws of 1860, p. 223, as follows:)

An act relating to the New York and Erie Railroad Company.

SECTION 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same, That the purchaser and purchasers of the railroad, rolling-stock, franchises, property and estate, real and personal, of the New York and Erie Railroad Company, at any sale which may be decreed by the courts of the State of New York, under a decree for the foreclosure of the mortgages known as the third, fourth, or fifth mortgages of said company, or of either or all of
42 said mortgages, shall, on complying with the terms of sale, and receiving such deeds as the said supreme court shall direct, under and subject to encumbrances, and complying with such orders therein specified, in regard to the receiver of said property and franchises in this State as the supreme court of this State shall make and direct, become vested with all the railroad and road-bed, estate, real and personal property, rights, powers, privilege, and franchises which the said company now possess or hold in the State of Pennsylvania, or did possess at the date of the appointment of the said receiver, subject to all the duties, penalties, taxes, restrictions, obligations, and provisions of the laws of this State relating to and concerning said company, and also subject to the liens upon said premises and the franchises of said company created by the State of New York, and by such mortgages thereupon made by the said company, prior to the mortgage upon which such decree may be made, as have been recorded in this State, which said mortgages are hereby ratified and confirmed; and the purchasers may convey all and singular the said property, railroad, and fran-
43 chises, with the appurtenances, to any new corporation that may be organized under the laws of the State of New York for the purpose of owning and operating said road; and said new corporation may mortgage the same, as allowed by the laws of the State of New York, but such mortgages are to be recorded in this State: Provided That said mortgages shall not include or encumber the residue of said land hereinafter provided to be released from the present mortgages.

SECTION 2. The said receiver shall continue to operate said road and exercise said franchises, under the orders of said courts in New York and in this State, until a corporation, so to be formed under the laws of the State of New York, shall receive possession of the same, as may be allowed by the said courts.

SECTION 3. That the supreme court of this State, upon due notice to the trustees of said mortgages, and to said receiver, shall appoint a commissioner in said suit pending in said court, who, on due notice in writing to said trustees and receiver shall, after examination, and
44 after hearing said trustees and receiver by counsel or otherwise, and such witnesses as may be offered, decide what real estate in and about Susquehanna depot, in the county of Susquehanna, is reasonably necessary, in reference to the present and future use and operation of said railroad depots, tracks, road-bed, machine-shops, water stations, and other property of said New York and Erie Railroad, and the future owners, occupiers, or operators thereof, and so that the purchaser and any future corporation may conveniently maintain and operate the said road, and use all the shops and other depots, stations and turnouts, wood-sheds, and wood-yards, as the same have been hitherto used, or may hereafter become necessary for the business of said railroad, and shall report the same to said court by metes and bounds; and said court shall, if said trustees or receiver desire it, hear them in reference to said report, and upon such hearing to change, alter, and modify the said report and boundaries, and the to establish and confirm, and the said purchaser may take & hold the residue of said property, and sell
45 and dispose of the same, and upon confirming and ratifying the sales of any portion of said lands, heretofore contracted to be sold by the said New York and Erie Railroad Company, may and shall be entitled to receive all arrears of purchase-money due thereon.

SECTION 4. That no one of the mortgages of the said New York and Erie Railroad Company shall be held to be ratified and confirmed hereby until and unless the trustees therein named, severally and respectively, or the survivors of them, or their successors, shall release from the lien of the mortgages given to them respectively the residue of the said real estate at Susquehanna depot not required for said company, as hereinbefore provided; and which release they are hereby authorized to make without personal liability.

SECTION 5. That the supreme court of this State may make such order and decree for the sale of said railroad, in the State of New York, as they may deem advisable; and the settlement and the adjustment of the accounts of the receiver, which have heretofore or may hereafter be made in the supreme court of the State of New York, shall be
46 final and conclusive in respect thereto; and the said receiver shall pay from the funds in his hands all sums now due for labor and service performed for said company in this State, and for materials furnished by persons in this State, and for and relating to the expenses of the proceedings in this State, which the court of this State may direct.

JOHN M. THOMPSON,
Speaker of the House of Representatives.
WM. M. FRANCIS,
Speaker of the Senate.

Approved the twenty-second day of March, A. D. one thousand eight hundred & sixty.

WM. F. PACKER.

47 It is agreed that long before this change (of name) the road was constrncted from New York to Lake Erie; length of main line 455 miles—42½ miles of which is in the State of Pennsylvania, in Pike and Susquehanna Counties.

Return of this company dated Nov'r 24, 1873, (offered) as follows:

48 Period	Earnings of Buff. Bradford & Pitts'g R. R.	Earnings of the Hawley branch.	Earnings of Honesdale branch.	Earnings of Jefferson branch.	Total.	Earnings of the main line & branches.
May 1st to Dec. 31st, 1868	8, 191 91	180, 378 00	.....	.....	188, 569 91	10, 066, 020 50
Year 1869	11, 257 64	224, 372 00	35, 400 00	.....	271, 029 64	15, 550, 095 49
Year 1870	12, 626 07	301, 363 00	81, 659 00	.....	395, 648 07	16, 414, 352 00
Year 1871	12, 074 19	195, 368 00	43, 730 00	119, 991 00	371, 163 19	17, 547, 436 22
Year 1872	9, 709 55	324, 735 00	82, 105 00	135, 355 00	551, 904 55	18, 749, 279 46
Jan'y 1st to July 1st, 1873	4, 714 91	177, 000 00	18, 930 00	73, 998 00	274, 642 91	9, 526, 808 87
Total	$58, 574 27	$1, 403, 216 00	$261, 824 00	$329, 344 00	$2, 052, 958 27	$87, 853, 992 54

Total earnings of the Penna. branch.	Earnings of the main line & branches, exclusive of the earnings of the Penna. branches.	Exclusive of Penna. Mileage.	Exclusive of Penna. Earnings per mile.	Length of branches not touching Penna.	Earnings of the branches not touching Penna.	Earnings of the main line.	Proportionate earnings of the main line in Penna.
		Miles.		*Miles.*			
188, 509 91	9, 877, 450 59	710	13, 901 90	265	3, 686, 653 50	6, 190, 797 09	591, 255 90
271, 029 64	15, 279, 065 85	733¼	20, 823 26	288½	6, 012, 716 32	9, 266, 349 53	884, 988 38
395, 648 07	16, 018, 703 93	733¼	21, 831 28	288½	6, 303, 782 10	9, 714, 921 83	927, 829 57
371, 163 19	17, 176, 273 03	757	22, 689 92	312	7, 079, 255 04	10, 097, 017 99	964, 321 94
551, 904 55	18, 197, 374 91	840½	21, 650 65	395½	8, 562, 832 07	9, 634, 542 84	920, 153 05
274, 642 91	9, 252, 165 96	846	10, 936 24	401	4, 385, 432 24	4, 866, 733 72	464, 800 40
$2, 052, 958 27	$85, 801, 034 27	.....	.....	.....	$36, 030, 671 27	$49, 770, 363 00	$4, 753, 349 24

RECAPITULATION.

Earnings of the Penna. branches	$2, 052, 958 27
Earnings of main line in Penna	$4, 753, 349 24
Total	$6, 806, 307 51

AUDIT OFFICE, ERIE RAILWAY CO.,
New York, Nov. 17th, 1873.

STATE OF NEW YORK,
City & County of New York, ss:

Oliver W. Cooke of said county and State, being duly sworn, says that he is the auditor of traffic of the Erie Railway Company and branches named in the tabulated statement hereto annexed, & as such officer has charge and direction of all books of accounts of said company relating to the traffic thereof; that the annexed statement of the earnings of said Erie Railway & branches for the periods named respectively is made up from such books of account, and that the distribution of such earnings, amongst said railway & branches, as set forth in said statement, is just and true, to the best of deponent's knowledge & belief.

OLIVER W. COOKE.

Subscribed & sworn to before me this 24th day of November, A. D. 1873.

[SEAL.] EDSON D. HAMMOND,
Commissioner for Pennsylvania in New York.

(Endorsed:) Erie Railway Company. Gross receipts. Filed Decr. 22, 1873.

AUDITOR-GENERAL'S OFFICE,
Harrisburg, March 27th, 1874.

I hereby certify that the above and foregoing is a true copy of the original remaining on file in this department. Witness my hand and the seal of office the day and year aforesaid

SEAL OF AUD. GENL. PENNA.

HARRISON ALLEN,
Auditor-General.

49 (The Penna. branches have received during the time embraced in the settlement $2,052,958.27; also proportionate earnings of main line in Penna., $4,753,349.24. Return begins May 1, 1868, runs to July 1, 1873. The contest in the present case is as to the last-named sum of $4,753,349.24; from which assessment this appeal is taken.)

Settlement dated Dec. 31, 1873, read, striking a balance against the company for arrears of taxes at $72,647.31, made as above, as follows:

50 *Erie Railroad Company in account with the Commonwealth of Pennsylvania, Dr.*

For tax on gross receipts, per act of May 1, 1868, from May 1st, 1868, to June 30, 1873, as per report herewith filed.

1868.	(8 mos.) Gross receipts from branches in Penna	188,569 91	
	" " " main line 90,797.07, $\frac{42}{45}\frac{1}{5}$*ths* parts representing proportion of main line in State of Penna	591,255 90	
	Tax $\frac{3}{4}$*ths* of one per cent. on	779,825 81	5,848 69
	Add 10 per cent., per act May 1, 1868		584 86
	Interest on $5,848.69 from January 1st, 1869, to Dec. 31, 1873		3,509 21
1869.	Gross receipts from Penna. branches	271,029 64	
	" " " main line, $9,266-349.53. Proportion in Penna. as above	884,988 38	
	Tax $\frac{3}{4}$ *ths* of one per cent. on	1,156,018 02	8,670 14
	Add 10 per cent. per act of May 1st, 1868		867 01
	Interest (averaged) from Oct. 1st, 1869, to Dec. 31st 1873		4,421 77
1870.	Gross receipts from Penna. branches,	395,648 07	
	" " " main line, 9,714,-921.83. Proportion in Pennsylvania	927,829 57	

	Tax ¾ths of one per cent. on.....	1,323,477 64	9,926 08
	Add 10 per cent., per act of May 1st, 1868.....		992 60
	Interest (averaged) from Oct. 1st, 1873, to Dec. 31st, 1873.....		3,871 17
1871.	Gross receipts from Penna. branches,	371,163 19	
	" " " main line, 10,097,017.99. Proportion in Pennsylvania.....	964,321 94	
	Tax ¾ths of one per cent. on.....	1,335,485 13	10,001 61
	Add 10 per cent., per act of May 1st, 1868.....		1,001 61
	Interest (averaged) Oct. 1st, 1871, to Dec. 31st, 1873.		2,704 35
1872.	Gross receipts from Penna. branches,	551,904 55	
	" " " main line, $9,634,542.84. Proportion in Pennsylvania.....	920,153 05	
	Tax ¾ths of one per cent. on.....	1,472,057 60	11,040 43
	Add 10 per cent., per act of May 1, 1868.....		1,104 04
	Interest (averaged) from Oct. 1st, 1872, to Dec. 31st, 1873.....		1,656 06
1873.	(6 mos.) Gross receipts from Penna. branches.....	274,642 91	
	" " " main line, $4,866,733.72. Proportion in Pennsylvania.....	464,800 40	
	Tax ¾ths of one per cent. on.....	739,443 31	5,545 83
	Add 10 per cent., per act of May 1st, 1868.....		554 58
	Interest from July 1, 1873, to December 31st, 1873,		332 74
	Due Commonwealth.....		$72,647 31

AUDITOR-GENERAL'S OFFICE.
Harrisburg, Dec. 31st, 1873.

Settled and entered:

HARRISON ALLEN
Auditor-General.

TREASURY OFFICE, PA.,
Harrisburg, December 31st, 1873.

Approved:

W. B. HART,
For R. W. MACKEY,
State Treasurer.

AUDITOR-GENERAL'S OFFICE,
Harrisburg, January 2d, 1874.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and the seal of office the day and year aforesaid.

[SEAL.]

HARRISON ALLEN,
Auditor-General.

51 Act of May 1, 1868, P. L. 108, section 8, read, as follows:

An act to revise, amend, and consolodate the several laws taxing corporations, brokers, and bankers.

SECTION. 8. That, in addition to the taxes provided for as aforesaid, every railroad, canal, and transportation company liable to tax upon tonnage, under the preceding section of this act, shall pay to the Commonwealth a tax of three-fourths of one per centum upon the gross receipts of said company. The said tax shall be paid semi-annually upon the first days of July and January, and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer, or other proper officer of said company, to transmit to the auditor-general, at the dates aforesaid, a statement under oath or affirmation, of the amount of gross receipts of the said company derived from all sources during the preceding six months; and if any such company shall neglect or refuse for a period of thirty days after such tax becomes due, to make said return, or to pay the same, the amount thereof, with an addition
52 of ten per centum, shall be collected for the use of the Commonwealth, as other taxes are recoverable by law from said companies: Provided, That the revenue derived under this section shall be applied to the payment of principal and interest of the debt contracted under the act of the fifteenth of May, anno Domini one thousand eight hundred and sixty-one, entitled "An act to create a loan and to provide for arming the State."

ELISHA W. DAVIS,
Speaker of the House of Representatives.
JAMES L. GRAHAM,
Speaker of the Senate.

Approved the first day of May, anno Domini one thousand eight hundred and sixty-eight.

JNO. W. GEARY.

Plaintiff rests.

53 *Defence.*

Specifications read as follows:

Specifications of objections to the settlement of the auditor-general and state treasurer of the State of Pennsylvania against the Erie Railway Company for tax on gross receipts.

In the matter of the account settled by the auditor-general and state treasurer of the State of Pennsylvania, on the 31st day of December, A. D. 1873, between the Commonwealth of Pennsylvania and the Erie Railway Company, for taxes claimed to be due to the said Commonwealth upon the gross receipts of said company, from the 1st day of May, 1868, to the 30th day of June, 1873, under the provisions of the act of the general assembly of the State of Pennsylvania, approved May 1, 1868, entitled "An act to revise, amend, and consolidate the several laws taxing corporations, brokers, & bankers."

The said The Erie Railway Company hereby appeals from said settlement, a copy of which is hereto annexed, to the court of com-
54 mon pleas of Dauphin County, in the State of Pennsylvania, as authorized by act of assembly in such case made and provided, and specifies the following objections to the said settlement:

1. The eighth section of said act of May 1, 1868, under which said

settlement was made, does not apply, and was not intended to apply, to the said Erie Railway Company, because the said company is not doing business in the State of Pennsylvania in the sense intended by said act, but is, as to nearly all of the freight from the transportation of which said gross receipts accrued, merely using *using* the right of way through a small portion of the territory of Pennsylvania, which it purchased from and pays for to the said State.

2. The said section of said act of May 1, 1868, so far as it may be held applicable to said The Erie Railway Company or to the tax charged against said company in respect of the gross receipts from its main line in said settlement is repugnant to the Constitution of the United
55 States, because it impairs the obligation of the contract entered into between the State of Pennsylvania and said company by the enactment and acceptance by said company of the act of assembly of said State, approved Feb'y 16, 1841, entitled "An act to authorize the New York and Erie Railroad Company to construct said road through a portion of Susquehanna County, in the State of Pennsylvania," and the several supplements thereto, to wit:

(1.) An act entitled "A supplement to an act entitled 'An act to authorize the New York and Erie Railroad Company to construct said road through a portion of Susquehanna County, in the State of Pennsylvania,' passed the sixteenth day of February, one thousand eight hundred and forty-one," approved the 26th day of March, A. D. 1856.

(2.) An act approved the first day of April, A. D. 1848, entitled "A supplement to an act entitled 'An act to authorize the New York and Erie Railroad to construct said railroad through Susquehanna County.'"

(3.) An act approved the fourteenth day of April, A. D. 1851, entitled "An act regulating the licensing of beer-houses and houses to sell liquors in the counties of Susquehanna and Wyoming; relative to the
56 New York and Erie Railroad; to change the name of the Legget's Gap Railroad Company; and to the release of Christian Hashulen as one of the sureties of Jacob Sallade, late surveyor-general."

(4.) An act approved the eleventh day of March, A. D. 1852, entitled "An act to incorporate the East Liberty, North Washington, and Apollo Plank-road Company; relating to the claim of Alexander McConnell; to the Buck Mountain Coal Company; and to the New York and Erie Railroad."

(5.) An act approved the twenty-eighth day of April, A. D. 1852, entitled "A supplement to the act incorporating the Washington National Insurance Company of Philadelphia;' relative to the Junction Canal Company; to the sale of real estate by O. P. Ballard; and to the sale of lands by the New York and Erie Railroad Company."

(6.) An act approved the eighteenth day of April, A. D. 1853, entitled "An act extending the time for the commencement of the Athens and Ithaca Railroad; relative to the New York and Erie Railroad Company; and relative to Christian Street, in the district of Moyamensing, Philadelphia County."

57 (7.) An act approved the twenty-seventh day of April, A. D. 1855, entitled "A supplement to the act incorporating the Washington National Insurance Company, of Philadelphia; relative to the Junction Canal Company; to the sale of real estate by O. P. Ballard; and to the sale of lands by the New York and Erie Railroad Company."

(8.) Resolutions of the said legislature, approved the twenty-seventh day of March, A. D. 1855, entitled "Resolutions relative to the New York and Erie Railroad Company."

(9.) An act, approved the twenty-second day of March, A. D. 1860, entitled "An act relating to the New York and Erie Railroad Company."

All of which acts are in evidence in this case.

3. The said State of Pennsylvania, having by said act of 1841, and the said several supplements thereto, prescribed for and imposed upon said company a special rate of taxation, which is still imposed and exacted, cannot, in addition thereto, exact from said company the taxes which are imposed upon her own corporations by general laws; and so to do would impair the obligation of the said contract between
58 said State and said company.

4. Said section of said act of May 1, 1868, does not apply to said company, because the annual tax of ten thousand dollars imposed upon the company by the fifth section of the act of March 27, 1846, was intended to compensate the Commonwealth for the right of way through her territory, and that the tax imposed by the sixth section of said act upon that portion of the company's stock which represents the cost of construction in Pennsylvania was meant to be in lieu of all other taxation of the property of the company within the State of Pennsylvania.

5. That said section of said act of May 1, 1868, so far as it is or may be held to authorize the imposition of the tax charged upon the gross receipts of said company derived from the business of their main line as charged in said settlement, or of the interest and penalties charged in respect of the same, is unconstitutional & void, because repugnant to the Constitution of the United States.

Witness the corporate seal of said company duly attested, this 26 day of January, A. D. 1874.

[SEAL.] THE ERIE RAILWAY COMPANY,
By L. ROBINSON,
Acting Pres't.

Attest:
A. R. MCDONOUGH,
Secretary.

59 (It is conceded that the tax of $10,000 imposed by the act of 1841, and also the tax upon the capital invested in this State, has been regularly paid, and the Commonwealth of Pennsylvania claims that the company is still liable to pay said tax of $10,000, with that on the expenditure by the company in this State.)

60 Defendant reads and gives in evidence the fourth section of an act of the general assembly of the Commonwealth of Penna., approved April 14, 1851, (Penna. Pamphlet Laws of 1851, page 628,) the other sections of said act having no relation to the New York & Erie R. R. Co., as follows:

An act regulating the licensing of beer-houses and stores to sell liquors in the counties of Susquehanna and Wyoming; relative to the New York and Erie Railroad; to change the name of the Leggett's Gap Railroad Company; to the Germantown Gas Company, and to the release of Christian Hashulen, as one of the sureties of Jacob Sallade, late surveyor-general.

SECTION 4. That the New York and Erie Railroad Company be, and they are hereby, required, within six months from the passage of this act, to erect, and at all times keep in good repair, a sufficient and lawful fence on each side of their railroad, in the county of Susquehanna,

where it may be necessary for the public safety, and where the owner or owners of the land through which said road passes have not agreed to fence said road, or have not been paid for such fencing; and said company is also required, within the time aforesaid, to construct
61 and keep in repair good and sufficient cattle-guards, on each side of all public crossings in said county; and if the said company fail to comply with the provisions of this section, they shall be liable in an action of debt for the value of the property injured or destroyed as like sums are now by law recoverable; and in such case it shall not be necessary for the plaintiff to prove negligence on the part of the company.

JOHN CESSNA,
Speaker of the House of Representatives.
BENJAMIN MATHIAS,
Speaker of the Senate.

Approved the fourteenth day of April, A. D. one thousand eight hundred and fifty-one.

WM. F. JOHNSTON.

62 Also the seventh section of an act of the general assembly of the Commonwealth of Penna., approved March 11, 1852, (Pamphlet Laws, 1852, page 132,) the other sections of said act having no relation to the New York & Erie R. R. Co., as follows:

An act to incorporate the East Liberty, North Washington, & Apollo Plank-road Company; relating to claim of Alexander McConnell; to the Buck Mountain Coal Company, & to the New York and Erie Railroad.

SECTION 7. That the provisions of the fourth section of an act entitled "An act regulating the licensing of beer-houses & stores to sell liquors in the counties of Susquehanna and Wyoming"; relative to the New York and Erie Railroad, et cetera," approved the fourteenth (14th) day of April, one thousand eight hundred & fifty-one, be, and the same is hereby, extended to the county of Pike.

JOHN S. RHEY,
Speaker of the House of Representatives.
JOHN H. WALKER,
Speaker of the Senate.

Approved the eleventh day of March, A. D. one thousand eight hundred and fifty-two.

WM. BIGLER.

63 Also the ninth section of an act of the general assembly of the Commonwealth of Pennsylvania, approved April 28, 1852, Penna. pamphlet laws 1852, page 476,) the other sections of said act having no relation to the New York & Erie R. R. Co., as follows:

A supplement to the act incorporating the Washington Mutual Insurance Company of Philadelphia; relative to the Junction Canal Company; to the sale of real estate by O. P. Ballard; and to the sale of lands by the New York and Erie Railroad Company.

SECTION 9. That the titles to certain lands heretofore purchased by the New York and Erie Railroad Company, for the purpose of obtaining the right of way, water-privileges, and of erecting machine-shops, build-

ings, and fixtures, in the counties of Susquehanna and Pike, is hereby confirmed and made valid, and the said company authorized, empowered, and required to sell and convey such portions of said lands as may not be necessary for the legitimate purposes of the said railroad, and make title for the same to the purchaser: Provided, that the number of acres of land which it shall be lawful for said company to hold and pos-
64 sess, from and after the first of January, eighteen hundred and fifty-four next, shall not exdeed fifty acres in any one county.

JOHN S. RHEY,
Speaker of the House of Representatives.
JOHN H. WALKER,
Speaker of the Senate.

Approved the twenty-eighth day of April, A. D. one thousand eight hundred & fifty-two.

WM. BIGLER.

65 Also, the second section of an act of the general assembly of the Commonwealth of Penna., approved April 18, 1853, (page 510,) the other sections of said act having no relation to the New York and Erie Railroad Company, as follows:

An act extending the time for the commencement of the Athens and Ithica Railroad; relative to the New York and Erie Railroad Company; and relative to Christian street, in the district of Moyamensing, Philadelphia County.

SECTION 2. That the New York and Erie Railroad Company is hereby authorized to hold and possess an additional quantity of fifty acres of land in Susquehanna County, for the purposes mentioned in the ninth section of an act supplement' to an act incorporating the Washington Mutual Insurance Company of Philadelphia, and relative to the New York and Erie Railroad Company, approved April twenty-fifth, one thousand eight hundred and fifty-two; and the period limited in said section for conveying certain lands is hereby extended to the first of January, one thousand eight hundred and fifty-six, and that said
66 company is hereby authorized to sell and convey such lands as are held by it in Pike County, for other purposes than those mentioned in said section, which conveyance shall be good and valid in law to the purchaser or purchasers of the same.

WM. P. SCHELL,
Speaker of the House of Representatives.
THO. CARSON,
Speaker of the Senate.

Approved the eighteenth day of April, one thousand eight hundred and fifty-three.

WM. BIGLER.

67 Also, an act of the general assembly of the Commonwealth of Pennsylvania, approved April 27, 1855, (Penna. pamphlet laws of 1855, page 646,) as follows:

Supplement to the act incorporating the Washington Mutual Insurance Company of Philadelphia, relative to the Junction Canal Company, to the sale of real estate by O. P. Ballard, and to the sale of lands by the New York and Erie Railroad Company.

SECTION 1. Be it enacted by the senate and house of representatives

of the Commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same, that the time limited for the sale of certain lands by the New York and Erie Railroad Company; by the ninth section of the act incorporating the Washington Mutual Insurance Company of Philadelphia, relative to the Junction Canal Company, approved April twenty-eighth, one thousand eight hundred and fifty-two, and the supplement thereto, be extended to January the first, one thousand eight hundred and sixty.

HENRY K. STRONG,
Speaker of the House of Representatives.
WM. M. HEISTER,
Speaker of the Senate.

68 Approved the twenty-seventh day of April, anno Domini one thousand eight hundred and fifty-five.

JAS. POLLOCK.

69 Also resolutions relative to the New York and Erie Railroad Company, approved March twenty-seventh, 1855, (Penna. pamphlet laws of 1855, page 654,) as follows: Resolutions relative to the New York and Erie Railroad Company.

RESOLUTION 1.—Be it resolved by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met, that the New York and Erie Railroad Company be and are hereby required to communicate to the legislature of this Commonwealth, a statement certified under oath by their president, setting forth what quantity of land said company now hold in Pennsylvania, its location, how much they have heretofore disposed of, its value, the value of what they now hold, and when the titles to the said lands were acquired.

RESOLUTION 2.—That the governor of the Commonwealth be authorized and requested to transmit a copy of the foregoing resolution to the president of the New York and Erie Railroad Company.

HENRY K. STRONG,
Speaker of the House of Representatives.
WM. M. HEISTER,
Speaker of the Senate.

70 Approved the twenty-seventh day of March, anno Domini one thousand eight hundred and fifty-five.

JAS. POLLOCK.

71 (It is in proof that this appeal embraces no charge against the branches in Penna., but is as to that part assessed against the main line only.)

72 Points submitted in writing to the court below, as follows:

The court is respectfully requested to charge the jury as follows:

1. The eighth section of the act of May 1, 1868, under which said settlement was made, does not apply, and was not intended to apply, to the said Erie Railway Company, because the said company is not doing business in the State of Pennsylvania, in the sense intended by said act, but is, as to nearly all of the freight from the transportation of which said gross receipts accrued, merely using the right of way through a small portion of the territory of Pennsylvania, which it purchased from and pays for to said State, as appears by the undisputed facts in evidence.

2. The said section of said act of May 1, 1868, so far as it may be held applicable to said The Erie Railway Company, or to the tax charged against said company, in respect of the gross receipts from its main line, in said settlement, is repugnant to the Constitution of the United States, because it impairs the obligation of the contract entered into be-
73 tween the State of Pennsylvania and said company, by the enactment and acceptance by said company of the act of assembly of said State, approved Feb'y 16, 1841, entitled "An act to authorize the New York and Erie Railroad Company to construct said road through a portion of Susquehanna County, in the State of Pennsylvania," and the several supplements thereto, to wit:

(1.) An act entitled "Asupplement to an act to authorize the New York and Erie Railroad Company to construct said road through a portion of Susquehanna County, in the State of Pennsylvania, passed the 16th day of February, one thousand eight hundred and forty-one," approved the twenty-sixth day of March, A. D. 1846.

(2.) An act approved the first day of April, A. D. 1848, entitled "A supplement to an act entitled a supplement to an act entitled an act to authorize the New York and Erie Railroad Company to construct said railroad through Susquehanna County."

(3.) An act approved the fourteenth day of April, A. D. 1851, entitled "An act regulating the licensing of beer-houses and houses to sell liquors in the counties of Susquehanna and Wyoming; relative
74 to the New York and Erie Railroad; to change the name of The Legget's Gap Railroad Company; and to the release of Christian Harhulen as one of the sureties of Jacob Sallade, late surveyor-general."

(4.) An act approved the eleventh day of March, A. D. 1852, entitled "An act to incorporate the East Liberty, North Washington and Apollo Plank-Road Company; relating to the claim of Alexander McConnell; to the Buck Mountain Coal Company; and to the New York and Erie Railroad."

(5.) An act approved the twenty-eighth day of April, A. D. 1852, entitled "A supplement to the act incorporating the Washington National Insurance Company of Philadelphia; relative to the Junction Canal Company; to the sale of real estate by O. P. Ballard; and to the sale of lands by the New York and Erie Railroad Company."

(6.) An act approved the eighteenth day of April, A. D. 1853, entitled "An act extending the time for the commencement of the Athens and Ithaca Railroad; relative to the New York and Erie Railroad Company; and relative to Christian street, in the district of Moyamensing, Philadelphia County.

75 (7.) An act approved the twenty-seventh day of April, A. D. 1855, entitled "A supplement to the act incorporating the Washington National Insurance Company of Philadelphia; relative to the Junction Canal Company; to the sale of real estate by O. P. Ballard; and to the sale of lands by the New York and Erie Railroad Company."

(8.) Resolutions by the said legislature, approved the twenty-seventh day of March, A. D. 1855, entitled "Resolutions relative to the New York and Erie Railroad Company."

(9.) An act approved the twenty-second day of March, A. D. 1860, entitled "An act relating to the New York and Erie Railroad Company." All of which acts are in evidence in this case.

3. The said State of Pennsylvania having, by said act of 1841, and the said several supplements thereto, prescribed for and imposed upon said company a special rate of taxation, which is still imposed and exacted, cannot, in addition thereto, exact from said company the taxes

which are imposed upon her own corporations by general laws; and so to do would impair the obligation of the said contract between said State and said company.

4. Said section of said act of May 1, 1868, does not apply to
76 said company, because the annual tax of ten thousand dollars, imposed upon the company by the fifth section of the act of March 27, 1846, was intended to compensate the Commonwealth for the right of way through her territory, and that the tax imposed by the sixth section of said act upon that portion of the company's stock which represents the cost of construction in Pennsylvania, was meant to be in lieu of all other taxation of the property of the company in Pennsylvania.

5. That said section of said act of May 1, 1868, so far as it is or may be held to authorize the imposition of the tax charged upon the gross receipts of said company, derived from their business of their main line, as charged in said settlement, or of the interest and penalties charged in respect of the same, is unconstitutional and void, because repugnant to the Constitution of the United States.

J. W. SIMONTON,
Counsel for Defendants.

77 *Answers to defendant's points.*

1. We have in our general charge expressed the opinion that this corporation is clearly embraced within the provisions of the 8th section of the act of May 1, 1868, and gave our reasons therefor, consequently it is answered in the negative.

2. We are of the opinion that the tax imposed on this company does not impair any contract, express or implied, in or by any of the various statutes referred to in this point; that nothing can be drawn from any of them by which it appears that the corporation or its works were to be exempt from further taxation, which may be imposed by the legislature the same as on any corporation created by our laws. This is answered in the negative.

3. The views expressed in the general charge clearly show that we do not consider that there is any provision in any of the statutes referred to, or in all put together, which could exempt this com-
78 pany from future taxation, and that the intention to impose it is clearly expressed in the act of May 1, 1868.

4. This point negatived, there is nothing in the act of 1846 which shows that the sum of money exacted by the 5th & 6th sections of the act was intended to be in lieu of all other taxation of the property or business of the company in the State of Pennsylvania.

5. We have already, in the charge and answers to the other points, instructed the jury to the contrary. Therefore this point is answered in the negative.

79 *Charge to the jury.*

The 8th section of the act of May 1st, 1868, imposes a tax of $\frac{3}{4}$ths of one per centum upon the gross receipts of every railroad or transportation company within this Commonwealth which is subject to a tax on its tonnage under the preceding section of this act. The 7th section of the same act declares, among other companies enumerated, that every railroad doing business in this Commonwealth shall pay a tax on each ton of freight transported. It cannot be denied that this Erie Railway Com-

pany is "doing business within this State." It therefore comes within the very letter of the statute.

There is no dispute in regard to the gross receipts of this corporation, the road of which is 455 miles in length 42½ of which is in the State of Pennsylvania, and the tax on the receipts is apportioned according to the length of road within our borders.

The tax is claimed from the first day of May, 1868, the date of the act, until the 31st day of December, 1873. The company is also charged with a penalty of ten per cent. for failure to make report and pay
80 the tax, and with interest at the rate of 12 per centum from the time the tax became due and payable under the 12th section of the act of 1868, and a commission of 5 per centum for the counsel of the Commonwealth under the 3d section of the act of April 7th, 1870. The tax claimed by the department on account of the receipts of the branches of this road it is conceded, is not demandable, having been paid by them respectively, or for some other cause.

Taking these charges to be correct, the whole sum due the State, when this settlement was made, $72,647.64, which bears interest at the rate of 12 per cent. from sixty days after the settlement, which occurred on the 31st day of December, 1873, making in all, due this day, $76,824.56.

We must next consider the ground of defense. The Erie Railroad Company was originally incorporated by the State of New York, in the year 1832. It was permitted by the act of 15th day of Feb'y, 1841, to carry its road into the State of Pennsylvania for a distance of some fifteen miles, in the county of Susquehanna; by a subsequent
81 law, enacted on the 26th day of March, 1846, it was authorized to farther extend its road into the county of Pike, making the whole length of the road in Pennsylvania, as before stated, 42½ miles.

By the 5th section of the act the company, after the construction of its road to Dunkirk, is required to pay into the State treasury, annually, in the month of January, the sum of $10,000.

The 6th section makes it the duty of the officers to report the amount of travel and transportation on the road; also the cost of construction, and to pay a tax on the stock and cost of construction equal to that assessed on similar property within this State.

It is contested that this is in lieu of all other taxation, and that the State of Pennsylvania can impose no further burdens on the company.

We are of a different opinion; no property can claim exemption from taxation without an express grant to that effect. Immunity from the payment of taxes must be secured by contract. Had the law provided that the sum of ten thousand dollars, and the assessment against
82 the stock and business, should be in lieu of all other taxes, the State would have been bound. The contract could not have been impaired. We find nothing of the kind in the law.

The particular tax we consider highly unjust in its general operations, as several of the companies in this State have been obliged to pay a heavy tax on their gross receipts, when their business did not net one dollar of profit, but an annual loss; but that is not a question for the courts. Our only inquiry is as to the constitutionality of the enactment.

But for the decision of the Supreme Court of the United States in the case of the Philadelphia & Reading R. R. vs. Commw'th, (15 Wallace,) we would have said that a large portion of this tax was in violation of the Constitution of the United States, as interfering with the commerce between the States, to the same effect as if it had been imposed on the

tonnage carried, as nearly all of these receipts arose from freight on goods or persons transported through the State of Pennsylvania; scarcely any of it was derived from business originating within the State.

The law must now be considered settled otherwise by that case;
83 this, with the answers to the points, sufficiently expresses our views of the law of the case; and to the general charge and the answers to the points, the defendant by its counsel did except, and by his request this exception sealed.

JNO. J. PEARSON. [SEAL.]

84 In the court of common pleas of Dauphin Co.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE ERIE RAILWAY COMPANY. } No. 77 of April term, 1874.

And now, to wit, March 24, 1874, trial ordered, jury called, came, &c., twelve good and lawful men of the county of Dauphin, duly selected, summoned, returned, &c., all of whom, being duly sworn and affirmed according to law, do say, March 24, 1874, that they find in favor of the plaintiff the sum of seventy-six thousand seven hundred eighty-eight & $\frac{20}{100}$ dollars ($76,788.20,) April 13, 1874, judgment on the verdict.

85 Among the records and proceedings of the supreme court of Pennsylvania, in and for the middle district, to the May term, 1874, No. 111, it is contained as follows, to wit:

Docket entries.

Simonton. Dimmick.

THE ERIE RAILWAY COMPANY, DEFENDANT below, and plaintiff in error,
vs.
THE COMMONWEALTH OF PENNSYLVANIA, plaintiff below, and defendant in error. } 111.

Writ of error to the court of common pleas of Dauphin County, No. 77, April T., 1874.

May 6, 1874. Præcipe for writ of error. Affidavit and recognizance filed. Same day, writ of error to the court of common pleas of Dauphin County issued, returnable third Monday of May instant.

May 25, 1874. Writ of error returned, with record from the court of common pleas of Dauphin County, and filed. Same day, assignments of error filed.

May 27, 1874, called for argument. Same day, to wit, May 27, 1874, this came on to be heard, and on due consideration it is ordered that the judgment of the court below be affirmed, this court being of the
86 opinion that the rulings of the learned judge of the court below, complained of in the assignments of error, were in all respects in conformity with law.

Per curiam.

D. A., *C. J.*

June 6, 1874. Writ of error from the Supreme Court of the United States received and filed. Same day, writ of error bond in one hundred

and fifty-five thousand dollars, approved by Hon. Daniel Agnew, chief-justice of the supreme court of Pa., received & filed. Same day, citation to defendant in error, with acceptance of service thereof, by Hon. Samuel E. Dimmick, attorney-general, received and filed. Same day, copy of writ of error for defendant in error received.

October 5, 1874. Transcript of record for Supreme Court of the United States, delivered to J. W. Simonton, esq., counsel for plaintiff in error.

Certified from the record.

Harrisburg, Pa., October 5, 1874.

[SEAL.] ROBT. SNODGRASS, *Prothonotary.*

87 In the supreme court of Pennsylvania for the middle district.

THE ERIE RAILWAY COMPANY, DEFENDANT below, & plaintiff in error,
vs.
THE COMMONWEALTH OF PENNSYLVANIA, plaintiff below, & defendant in error.

Issue writ of error to the court of common pleas of Dauphin County to bring up the record and proceedings in a certain case depending therein to No. 77 of April term, 1874. Returnable to May term, 1874.

J. W. SIMONTON,
Attorney for Plaintiff in Error.

To R. SNODGRASS,
Proth'y Supreme Court of Pa., Middle District.

DAUPHIN COUNTY, *ss:*

J. W. Simonton, atty. for the above-named plaintiff in error, being duly affirmed according to law, deposes and says that the writ of error in this case is not intended for delay.

J. W. SIMONTON.

Affirmed subscribed before me this 5th day of May, 1874.
ROBT. SNODGRASS,
Proth'y Sup. Ct., M. D.

(Endorsed:) May 6, 1874.

83 In the supreme court of Penna. for the middle district.

THE ERIE RAILWAY COMPANY, DEFENDANT below, and plaintiff in error,
vs.
THE COMMONWEALTH OF PENNSYLVANIA, plaintiff below, and defendant in error.

Sur writ of error to the court of common pleas for the county of Dauphin, of April term, 1874. No. 77.

STATE OF NEW YORK,
New York City and County, ss:

We, Peter H. Watson and Samuel L. M. Barlow, severally acknowledge to owe the above-named defendant in error the sum of one hundred and fifty thousand dollars, upon condition that the above-named plaintiff in error prosecute their writ of error with effect, and if judgment be

affirmed, or the writ of error be discontinued or non-prossed, that they pay the debt, damages, and costs, adjudged or accruing upon such judgment, and all other damages and costs that may be awarded upon such writ of error, or else we will do it for them.

P. H. WATSON.
SAMUEL L. M. BARLOW.

Taken and acknowledged this 2d day of May, A. D. 1874, before me.
HARSEN H. SMITH,
Notary Public, New York.

(Endorsed:) Filed May 6, 1874.

89 In the supreme court of Pennsylvania in and for the middle district, *set:*

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, greeting:

SEAL OF THE SUP. CT. OF PENNA., MID. DIST. Because in the record and process, and in rendering the judgment in a certain plaint, which was in our said court, before the judges of the same court, by our writ between The Erie Railway Company, plaintiff in error, and The Commonwealth of Pennsylvania, (No. 77, April T., 1874,) defendant in error, as it is said, manifest error hath intervened, to the great damage of the said plaintiff in error, as by the complaint of the same plaintiff in error we have received information, we, willing that if any error be therein it should be corrected, and that speedy justice be done to the parties in this part, do command you, that if judgment, as it is said, be rendered in the said plea, then the record, and process, and all things touching the same, under your seals, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, at a supreme court to be held at Harrisburg, in and for the middle district of said Commonwealth, on the third Monday of May, instant, and this writ; that the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the honorable Daniel Agnew, LL. D., chief-justice of our said supreme court at Harrisburg, the 6th day of May, in the year of our Lord one thousand eight hundred and seventy-four, and of the Commonwealth the 98th.

ROBT. SNODGRASS,
Prothonotary.

90 The record, and process, and all things touching the same, so full and entire as before us they remain, to the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the middle district, we certify and send as within we are commanded.

JNO. J. PEARSON. [L. S.]

(Indorsed:) No. 111. May term, 1874. Supreme court of Pennsylvania, middle district. The Erie Railway Company, plaintiff in error, vs. The Commonwealth of Pennsylvania, defendant in error. Writ of error to the court of common pleas for the county of Dauphin. Returnable the third Monday of May, 1874. Rule on the defendant in error to appear and plead on the return-day of the writ.

"N. B.—10 days' notice to the parties or their counsel below is necessary to compel an appearance."

ROBT. SNODGRASS, *Proth'y*

Simonton.

91 In the supreme court of Pennsylvania, middle district.

THE ERIE RAILWAY COMPANY, defendant below and plaintiff in error, } No. 111. May term, 1874.
THE COMMONWEALTH OF PENNSYLVANIA. }

Specifications of error.

The court below erred in the answer to the first point presented by plaintiff in error, defendant in the court below, which point and answer are as follows:

FIRST POINT.

The eighth section of the act of May 1, 1868, under which said settlement was made, does not apply, and was not intended to apply, to the said Erie Railway Company, because the said company is not doing business in the State of Pennsylvania, in the sense intended by said act, but is, as to nearly all of the freight from the transportation of which said gross receipts accrued, merely using the right of way through a small portion of the territory of Pennsylvania which it purchased from and pays for to said State, as appears by the undisputed facts in evidence.

Answer. We have in our general charge expressed the opinion that this corporation is clearly embraced within the provisions of the 8 section of the act of May 1, 1868, and given our reasons therefor;
92 consequently it is answered in the negative.

The court below erred in the answer to the second point presented by plaintiff in error, defendant in the court below, which point and answer are as follows:

SECOND POINT.

The said section of said act of May 1, 1868, so far as it may be held applicable to said The Erie Railway Company, or to the tax charged against said company in respect of the gross receipts from its main line in said settlement, is repugnant to the Constitution of the United States, because it impairs the obligation of the contract entered into between the State of Pennsylvania and said company, by the enactment and acceptance by said company of the act of assembly of said State, approved February 16, 1841, entitled "An act to authorize the New York and Erie Railroad Company to construct said road through a portion of Susquehanna County, in the State of Pennsylvania," and the several supplements thereto, to wit:

(1.) An act entitled "A supplement to an act entitled 'An act to authorize the New York and Erie Railroad Company to construct
93 said road through a portion of Susquehanna County, in the State of Pennsylvania,' passed the 16th day of February, one thousand

eight hundred and forty-one," approved the twenty-sixth day of March, A. D. 1846.

(2.) An act approved the first day of April, A. D. 1848, entitled "A supplement to an act entitled 'A supplement to an act entitled an act to authorize the New York and Erie Railroad company to construct said road through Susquehanna County.'"

(3.) An act approved the fourteenth day of April, A. D. 1851, entitled "An act regulating the licensing of beer-houses and houses to sell liquors in the counties of Susquehanna and Wyoming; relative to the New York and Erie Railroad; to change the name of the Leggett's Gap Railroad Company; and to the release of Christian Harhulen, as one of the sureties of Jacob Sallade, late surveyor-general."

(4.) An act approved the eleventh day of March, A. D. 1852, entitled "An act to incorporate the East Liberty, North Washington and Apollo Plank-road Company; relating to the claim of Alexander McConnell; to the Buck Mountain Coal Company; and to the New York and Erie Railroad."

(5.) An act approved the twenty-eighth day of April, A. D. 1852, entitled "A supplement to the act incorporating the Washington
94 National Insurance Company, of Philadelphia; relative to the Junction Canal Company; to the sale of real estate by O. P. Ballard; and to the sale of lands by the New York and Erie Railroad Company."

(6.) An act approved the eighteenth day of April, A. D. 1853, entitled "An act extending the time for the commencement of the Athens and Ithaca Railroad; relative to the New York and Erie Railroad Company; and relative to Christian street, in the district of Moyamensing, Philadelphia County."

(7.) An act approved the twenty-seventh day of April, A. D. 1855, entitled "A supplement to the act incorporating the Washington National Insurance Company of Philadelphia; relative to the Junction Canal Company; to the sale of real estate by O. P. Ballard; and to the sale of lands by the New York and Erie Railroad Company."

(8.) Resolutions by the said legislature approved the twenty-seventh day of March, A. D. 1855, entitled "Resolutions relative to the New York and Erie Railroad Company."

(9.) An act approved the twenty-second day of March, A. D. 1860, entitled "An act relating to the New York and Erie Railroad Company," all of which acts are in evidence in this case.

Answer. We are of the opinion that the tax imposed on this
95 company does not impair any contract, express or implied, in or by any of the statutes referred to in this point; that nothing can be drawn from any of them by which it appears that the corporation, or its works, were to be exempt from future taxation which may be imposed by the legislature, the same as on any corporation created by our laws. This is answered in the negative.

The court below erred in the answer to the third point presented by the plaintiff in error, defendant in the court below, which point and answer are as follows:

THIRD POINT.

The said State of Pennsylvania having by said act of 1841, and the several supplements thereto, prescribed for and imposed upon said company a special rate of taxation which is still imposed and exacted, cannot in addition thereto exact from said company the taxes which are

imposed upon her own corporations by general laws; and so to do would impair the obligations of the said contract between said State and said company.

Answer. The views expressed in the general charge clearly
96 show that we do not consider that there is any provision in any of the statutes referred to, or in all put together, which would exempt this company from future taxation, and that the intention to impose it is clearly expressed in the act of May 1, 1868.

The court below erred in the answer to the fourth point presented by the plaintiff in error, defendant in the court below, which point and answer are as follows:

FOURTH POINT.

Said section of said act of May 1, 1868, does not apply to said company, because the annual tax of ten thousand dollars imposed upon the company by the fifth section of the act of March 27, 1846, was intended to compensate the Commonwealth for the right of way through her territory, and that the tax imposed by the sixth section of said act upon that portion of the company's stock which represented the cost of construction in Pennsylvania, was meant to be in lieu of all other taxation of the property of the company in the State of Pennsylvania.

Answer. This point negatived. There is nothing in the act of
97 1846 which shows that the sum of money exacted by the 5th and 6th sections of the act was intended to be in lieu of all other taxation of the property or business of the company in the State of Pennsylvania.

The court below erred in the answer to the fifth point presented by the plaintiff in error, defendant in the court below, which point and answer are as follows:

FIFTH POINT.

That said section of said act of May 1, 1868, so far as it is or may be held to authorize the imposition of the tax charged upon the gross receipts of said company, derived from the business of their main line, as charged in said settlement, or of the interest and penalties charged in respect of the same, is unconstitutional and void, because repugnant to the Constitution of the United States.

Answer. We have already in the charge and answers to the other points instructed the jury to the contrary. Therefore this point is answered in the negative.

(Endorsed:) Filed May 25, 1874.

98 Judgment entered May 27, 1874, as follows, to wit:

And now, to wit, May 27, 1874, this cause came on to be heard, and on due consideration it is ordered that the judgment of the court below be affirmed, this court being of the opinion that the rulings of the learned judge of the court below, complained of in the assignment of error, were in all respects in conformity with law.

Per curiam.

D. A., *C. J.*

99 And now here, on this day, to wit, June 6, 1874, the said the Erie Railroad Company produced to the supreme court of Penn-

sylvania here, the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgment aforesaid, so as aforesaid rendered, with all things touching the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the second Monday of October next, which writ of error is in the words and of the tenor following, to wit:

100 UNITED STATES OF AMERICA:

The President of the United States to the judges of the supreme court of the State of Pennsylvania, the highest court of law or equity in the said State, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you between The Erie Railway Company, plaintiff in error, and the State of Pennsylvania, defendant in error, (No. 111 May term, 1874, of the middle district of Pennsylvania,) in which said suit the validity of a statute of the State of Pennsylvania, on the ground of repugnancy to the Constitution of the United States, is said to have been drawn in question, and the decision to have been in favor of the said statute, a manifest error has intervened to the great damage of the said plaintiff in error, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded that, if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the Supreme Court to be then and there held, that, the record and process aforesaid being inspected, the said Supreme Court may cause to be done therein what of right and according
101 to the laws and customs of the United States should be done.

(S. B.)

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourth day of June, A. D., one thousand eight hundred and seventy-four, and in the ninety-eighth year of the Independence of the said United States.

(S. B.)

[SEAL.]

SAMUEL BELL,
Clerk U. S. Circuit Court E. D. of Pa.

JUNE 4TH, 1874.

Allowed by me this fourth day of June, A. D. 1874, at Harrisburg, Pa.

DANIEL AGNEW,
Chief-Justice of Supreme Court of Penna.

(Indorsed:) The Erie Railway Company vs. The Commonwealth of Penna. Writ of error. Filed in the office of the prothonotary of the supreme court of Penna. for the middle district June 6, 1874. Robt. Snodgrass, proth'y.

102 In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States accordingly.

103 *Writ of error bond.*

In the supreme court of Penna., middle district.

THE ERIE RAILWAY COMPANY
v.
THE COMMONWEALTH OF PENNSYLVANIA. } No. 111. May term, 1874.

Know all men by these present' that we, The Erie Railway Company and Peter H. Watson and Samuel L. M. Barlow, of the city and State of New York, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of one hundred and fifty-five thousand dollars, ($155,000,) to be paid to the said Commonwealth, its certain attorney or assigns; to which payment well and truly to be made, we bind ourselves, and each of us, and each of our successors, heirs, executors, and administrators, jointly and severally, firmly by these present', sealed with our seals, and dated May 28, A. D. 1874.

The consideration of this obligation is such that, whereas the said Commonwealth of Pennsylvania has recovered a judgment in the supreme court of the State of Pennsylvania, in and for the middle district against the said The Erie Railway Company for the sum of seventy-six thousand seven hundred and eighty-eight and $\frac{20}{100}$ dollars, ($76,788.$\frac{20}{100}$) and costs, which said judgment was rendered on
104 the twenty-seventh day of May, A. D. 1874; and whereas the said The Erie Railway Company, in order to obtain a reversal of the same, have sued out a writ of error to the Supreme Court of the United States:

Now, therefore, if the above-named The Erie Railway Company shall prosecute their said writ with effect, and shall answer all costs and damages, and pay the said judgment if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

{ SEAL OF RAILWAY CO. }

THE ERIE RAILWAY COMPANY,
By P. H. WATSON, *President.*
P. H. WATSON, [SEAL.]
SAMUEL L. M. BARLOW. [SEAL.]

Attest:
E. D. HAMMOND,
Asst. Sec'y.

Executed and delivered in presence of—
CHAS. L. ATTERBURY.

I hereby certify the sureties named in the above bond are good and sufficient for the amount specified therein.
June 3rd, 1874.

SAMUEL BLATCHFORD,
District Judge of the United States for the Southern District of New York.

105 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George S. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that

I am well acquainted with the handwriting of Samuel Blatchford, whose name is subscribed to the annexed bond, and that the signature to the same is in his proper handwriting; and I do further certify that he was, at the time of signing the same, judge of the district court for the United States of America for the southern district of New York.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said district court this third day of June, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of these United States the ninety-eighth.

[SEAL.] GEORGE F. BETTS, *Clerk.*

Bond and sureties approved by me, at Harrisburg, this fourth day of June, A. D. 1874.

DANIEL AGNEW,
S. J. S. C. Penna.

(Endorsed:) Filed in the office of the prothonotary of the supreme court of Penna. for the middle district, June 6, 1874.

ROBT. SNODGRASS,
Proth'y.

106 The United States of America to the State of Pennsylvania, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error issued from the Supreme Court of the United States to the supreme court of Pennsylvania, wherein The Erie Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, viz, No. 111 of May term, 1874, (middle district) of the supreme court of Pennsylvania, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Daniel Agnew, chief-justice of the supreme court of Pennsylvania, this fourth day of June, A. D. one thousand eight hundred and seventy-four.

DANIEL AGNEW,
Chief-Justice of Supreme Court of Penna.

HARRISBURG, *June 6th*, 1874.

I hereby accept service of the above citation on behalf of the Commonwealth of Pennsylvania.

SAML. E. DIMMICK,
Attorney-General.

(Indorsed:) The Erie Railway Company vs. The Commonwealth of Penna. Citation. Filed in the office of the prothonotary of the supreme court for the middle district, June 6, 1874.

107 STATE OF PENNSYLVANIA, *ss:*

I, Robert Snodgrass, prothonotary of the supreme court of Pennsylvania in and for the middle district, said court being the highest court of law and equity in the State of Pennsylvania, do hereby certify that the within and foregoing, contained on pages one to one hundred and six inclusive, is a full, true, and correct copy and transcript of the

record and proceedings of the supreme court of Pennsylvania in and for the middle district, in the case lately depending therein to No. 111 of the May term, 1874, wherein The Erie Railway Company was plaintiff in error, and The Commonwealth of Pennsylvania was defendant in error.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Harrisburg, this 5th day of October, A. D. one thousand eight hundred and seventy-four.

[SEAL.] ROBT. SNODGRASS,
Prothy. Supreme Court of Pa., Middle District.

(Indorsement on cover:) No. 548. The Erie Railway Company, plaintiff in error, vs. The Commonwealth of Pennsylvania. Pennsylvania sup. court. Filed 6th October, 1874.

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(Indorsement on cover:) No. 548. The Erie Railway Company, plaintiff in error, vs. The Commonwealth of Pennsylvania. Pennsylvania sup. court. Filed 6th October, 1874.

EVENING POST STEAM PRESSES 41 Nassau Street, cor Liberty, N. Y

Supreme Court

OF THE UNITED STATES.

THE ERIE RAILWAY COMPANY,
Plaintiff in Error,
against
THE COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

Writ of Error to the Supreme Court of the State of Pennsylvania.

Brief on behalf of the plaintiff in error.

STATEMENT.

The Erie Railroad Company was chartered by an act of the Legislature of the State of New York, passed April 24th, 1832, with power to construct a single, double or treble railroad or way, from the city of New York to Lake Erie, through the southern tier of counties by way of Oswego, in the county of Tioga, to the

shore of Lake Erie, at some eligible point between the Cattaraugus Creek and the Pennsylvania line.

In the year 1846, by an act of the Legislature of the State of New York, passed May 11th, commissioners were appointed to determine the route of the company's railway, and they were authorized, if they should think proper, to locate in the State of Pennsylvania that portion of the line which now exists there, in pursuance of authority theretofore conferred on the company to that end by the Legislature of the State of Pennsylvania, and which will be more particularly referred to hereafter. Afterwards, and in pursuance of an act of the Legislature of the State of New York, passed April 4th, 1860, and various supplemented Acts, the road of this company was foreclosed and sold. In pursuance of this legislation the present company, under the name of the Erie Railway Company, was organized. By these several acts it was, among other things, provided "that the Erie "Railway Company shall possess all the rights, "franchises, powers and privileges by law conferred "upon the New York & Erie Railroad Company, as "fully and perfectly as though all laws relating to "said New York & Erie Railroad Company were re-"enacted in relation to the Erie Railway Company, "and all laws relating to the New York & Erie Rail-"road Company, and to the powers and duties of the "board of directors, and all the general laws of this "State, now applicable to the New York & Erie Rail-"road Company, and all the laws of other States re-"lating to the New York & Erie Railroad Company, "shall be applicable to the Erie Railway Company."

On the 16th February, 1841, the Legislature of the State of Pennsylvania passed an act in relation to the Erie Railroad Company, reciting the creation of the company under the laws of the State of New York and its general powers, after which the preamble proceeds as follows: "Whereas it is represented that in one "of said counties, to wit, the county of Broome, "bordering on the State of Pennsylvania, said com-

"pany are opposed in their construction of said road "by a mountain of such magnitude as to require tun- "nelling or to be surmounted by a stationary power "with immense expense to said company. Whereas "it is also represented that by being permitted in the "construction of said road to follow the valley of the "Susquehanna river a distance of about fifteen miles, "in the neighborhood of and near to said county of "Broome, though within the State of Pennsylvania, "said company might enjoy the advantages of a level "and easy route; and whereas it is alike politic and "just that amity between adjoining States in respect to "their internal improvement operations should be res- "pected and maintained, therefore, &c." The act then proceeds to designate in general terms a route which the company may adopt for its road in the State of Pennsylvania, requiring the filing of a map and survey, proper compensation to be made to land owners, prohibiting the obstructions of the public roads, requiring causeways to be made and kept in proper repair, providing for the service of legal process upon the company, that in the carriage of freight no discrimination shall be made against the citizens of the State of Pennsylvania, and that the company shall be liable for damage caused by fire occasioned by sparks falling from any of the locomotive engines, &c.

By this act, it will be perceived a free right of way was given, the company merely being subjected to certain general and very proper regulations. The act confined the right of way to the county of Susquehanna. On the 26th March, 1846, the Legislature of Pennsylvania passed a supplemental act authorizing the company to extend its line from a point near the village of Port Jervis, in Orange county, in the State of New York, across the Delaware river, into the county of Pike, thence up the valley and near the shore of said river within the said county, a distance not exceeding thirty miles, to a point not exceeding ten miles above the mouth of the Lackawaxen river, and

thence to recross the Delaware river to the easterly side thereof in the county of Sullivan, in the State of New York. Various restrictions and obligations were imposed upon the company, and among others, the following: "It shall be the duty of the president and the "managers of said company, as soon as said railroads "hall have been completed through Susquehanna and "Pike counties, Pennsylvania, to prepare a full and ac- "curate account of the cost of that portion of said road "within the territory of this State, authenticated by "the oath or affirmation of the president and secretary "of said company, and to communicate the same to "the auditor general of this Commonwealth, who shall "file the statement in his office; that after said rail- "road shall have been completed and in operation to "Dunkirk, or shall have connected at the western end "with any other improvement extending to Lake Erie, "said company shall cause to be paid into the said "treasury of the State, annually, in the month of Jan- "uary, $10,000, and any neglect or refusal by said "company to pay as aforesaid, shall work a forfeiture "of the rights and privileges granted by this act."

Section six, which is another important section, is as follows: "That the stock of said company, to an "amount equal to the costs of the construction of that "part of their road situate in Pennsylvania, shall be "subject to taxation by this Commonwealth in the "same manner, at the same rate as other similar prop- "erty is or may be subject, and it shall be the duty "of said company to cause their treasurer to pay into "the treasury of this State any tax to which said "proportion of stock is liable, and the said company "shall annually, in the month of January, make a "statement to the Legislature, under the oath or "affirmation of the president thereof, of its affairs and "the business done upon said road during the previ- "ous year, said statement to contain a full and accu-

" rate account of the number of passengers, amount " and weight of produce, merchandise, lumber, coal " and minerals transported on said road east of Dun- " kirk and west of Piermont."

By the second section there are imposed upon the company, in respect to the road authorized to be constructed in the county of Pike, all the restrictions and prohibitions relating to that part of the road authorized to be constructed in the county of Susquehanna, and the same privileges are confirmed.

Between the date of the act last mentioned and the 22d March, 1860, sundry acts were passed by the Legislature of Pennsylvania relating to this company, but none of them contain anything material to the present inquiry.

At the date last mentioned an act was passed referring to the Act of the Legislature of the State of New York for the foreclosure and sale of the road of the company, and in substance providing that the purchasers at such sale, upon complying with certain conditions, none of them material to the present inquiry, should succeed to all the rights and obligations of the Erie Railroad Company in Pennsylvania.

Since the foreclosure sale and re-organization the plaintiff company has continued to maintain and operate that portion of its railway constructed through a part of the counties of Pike and Susquehanna, in accordance with the Acts of the Legislature of the State of Pennsylvania, hereinbefore referred to.

It is claimed by the State of Pennsylvania that the plaintiff's company is liable to a tax on gross receipts under the Act of May 1, 1868, (hereinafter particularly referred to), *apportioned* as it is said " *according to the* " *length of road within our borders,*" Record, p. 28.

The tax imposed by sec. 7 on tonnage was adjuded to be void, in the case of the Reading R. R. Co., against Pennsylvania, and the Erie Railway Co. against the same, reported in the 15 Wallace. At about the same time in the case of the Reading R. R.

Co. against Pennsylvania, the tax on gross receipts, as to that company was decided to be valid.

In this connection it is to be remembered that the Reading R. R. Co. is a Pennsylvania corporation, that its road is situated and business conducted within the State. This same tax upon gross receipts has been levied upon the Erie Railway Company by the authorities of the State of Pennsylvania and the amount of it adjusted under the statute, from which adjustment an appeal was duly taken, and the tax having been sustained by the Supreme Court of the State, the present writ was issued to that Court.

SPECIFICATIONS OF ERROR.

First.—The Supreme Court of the State of Pennsylvania erred in affirming the judgment of the court below by the following order, that is to say:

"And now, to wit, May 27th, 1874, this cause came "on to be heard, and on due consideration it is order- "ed, that the judgment of the court below be affirmed, "this court being of the opinion that the ruling of the "learned judge of the court below, complained of in "the assignment of error, were in all respects, in con- "formity to law."

Second.—The said Supreme Court erred in not deciding that the Statute of Pennsylvania, of May 1st, 1868, did not embrace or include within any of its provisions the Erie Railway Company.

Third.—The said Supreme Court erred in deciding that the eighth section of the said Statute of May 1st, 1868, was applicable to the Erie Railway Company, and that the tax in question was lawfully assessed under the provisions of the said section.

Fourth.—The said Supreme Court erred in not de-

ciding that the said Act of May 1st, 1868, and every part thereof, if applicable to the said Erie Railway Company, was void, as impairing the obligation of the contract between the said company and the State of Pennsylvania, as evidenced by the said several statutes referred to.

POINTS.

I.

The statute of the State of Pennsylvania, passed May 1st, 1868, under which the tax in question is exacted, does not, and was not intended to apply to the Erie Railway Company. The statute is to be interpreted for the purpose of ascertaining the subject matter embraced by it by the aid, of and according to, the received canons of construction. The question now presented for consideration is, not whether the State of Pennsylvania may, under guise and color of taxation or otherwise, demand and exact from the Erie Railway Company any additional price that it may think proper to extort for the right of way and privilege heretofore granted and paid for at the stipulated price. On the contrary, the question presented under this point is, whether the State of Pennsylvania, according to the true intent and meaning of the statute in question, has expressed an intention to do so.

In this connection it is most important to observe that the present case, in none of its aspects, under this or the succeeding points, calls for the application of any other than the general and well settled rules of construction. Properly considered the case has nothing to do with the general proposition, that where an exemption from taxation is relied upon, the exemption must be established very clearly and beyond any doubt.

In order to determine whether a corporation, which sustains such a relation to the State of Pennsylvania as that sustained by the plaintiff company, is within the true intent and meaning of the act in question, it is necessary to take a general view of all its provisions.

The first section provides, among other things, that "no institution or company, incorporated by or under "any law of this Commonwealth, general or special, or "of any other State, and authorized to do business in "this State, shall go into operation" without first filing information with respect to its name, capital, officers, &c., in the office of the auditor general, and a penalty is prescribed for disobedience.

The second section provides, among other things, that it "shall be the duty of the president or treasurer "of any company incorporated by or under any law of "this Commonwealth, except banks and savings institu- "tions, and of all companies incorporated by any other "State and lawfully doing business in this Common- "wealth, *who are taxable under the laws of this State*, "to make a report, in writing to the auditor general, "annually, in the month of November, stating, specific- "ally, the amount of capital paid in, the date, amount "and rate per centum of each and every dividend "declared by their respective corporations during the "year ending with the first Monday of said month, "and in all cases where any such company shall fail "to make and declare any dividend during the year "ending as aforesaid, the treasurer and secretary "thereof * * * * shall, between the 1st and 15th days "of November in each year in which no dividend has "been declared * * * estimate and appraise the "capital stock of said company at its actual value in "cash, and when the same shall have been so esti- "mated and appraised they shall forward a certificate "thereof to the auditor general * * * *"

The third section prescribes penalties for neglect, and among others, is this: "The governor * * * shall

" thereupon by proclamation declare the charter of " said company or corporation forfeited and their " chartered privileges at an end."

The fourth section prescribes, among other things, the rate of taxation. " The capital stock of all com- " panies, whatever incorporated by or under any law " of this Commonwealth, or incorporated by any other " state and lawfully doing business in this common- " wealth * * * except banks and savings institutions " and foreign insurance companies licensed in pur- " suance of the general acts in relation thereto, shall " be subject to and pay a tax * * * annually at the " rate of one-half mill for each one per cent. of divi- " dend made or declared by such company, and in " case of no dividend being made or declared by such " company then three mills upon the valuation of the " capital stock of the same, made in accordance with " the provisions of the second section of this act * *."

The fifth section prescribes the method of enforcing the payment of the tax, and among other things provides that: " The amount of tax on capital stock im- " posed by the preceding section of this act, shall be " retained and deducted by the treasurer or other offi- " cer having charge of any company or corporation as " aforesaid, from the dividend or profits made or de- " clared as aforesaid, and he is hereby authorized and " required, on or before the 15th day of January, then " next, to transmit to the treasury of the Common- " wealth the amount of said tax, and if in case, where " no dividend has been made or declared, the funds of " such company, subject to the control of the treasurer " at the period when the value of said capital stock " shall be appraised, as required by the second section " of this act, shall be insufficient to pay the tax afore- " said, it shall be the duty of the said treasurer or " other officer forthwith to give notice to the stock- " holders of such company of the amount required on " each share of stock by them respectively held to en- " able the said treasurer to pay the tax aforesaid, and

" if any such stockholder shall neglect or refuse to " pay the amount so required for the period of thirty " days, from the time of such notice, the said trea- " surer, shall, after giving two weeks' public notice " * * * * proceed to sell at public " sale, and transfer to the purchaser so many shares of " the stock of such delinquent stockholder as may be " necessary to pay his portion of the tax required to " be paid as aforesaid. And if any company, incor- " porated as aforesaid, shall neglect or refuse to pay " the tax hereinbefore required to be paid, the direc- " tors, managers or treasurers thereof, for the time " being, shall be jointly and severally liable in their " individual capacity for the payment thereof, and " the same may be sued for and recovered under the " direction of the State treasurer, as debts of like " amount are recoverable."

The sixth section provides, among other things, that " every private banker and broker, and every unincor- " porated banking and savings institution and express " company, and all corporations incorporated by or " doing business in this Commonwealth, except those " liable to a tax on tonnage, under the provisions of " this act, and foreign insurance companies, licensed " in pursuance of the several acts in relation thereto, " except banks and savings institutions incorporated " by this State, shall annually, upon the 1st day of " November in each year, make report to the auditor " general, under oath or affirmation, setting forth the " entire amount of net earnings or income received " * * * *from all sources*, during the preceding " year, and upon such net earnings or income, the said " individuals, company or corporation, as the case may " be, shall pay to the treasurer * * * three per " centum, in addition to the tax imposed by the pre- " ceding sections of this act."

At this point it is very important to observe that the corporations upon which the tonnage tax, and the tax on gross receipts are imposed, as will presently be

seen, are the same corporations upon which all the other taxes are imposed by the act, except the tax on net earnings, prescribed by the sixth section.

The seventh section provides, among other things, that "the president, treasurer, cashier or other financial officer of every railroad company, steamboat company, canal company, and slack-water navigation company, now or hereafter doing business in this State, and upon whose works freight may be transported, whether by such company or by individuals, and whether such company shall receive compensation for transportation and toll, or shall receive tolls only, except turnpike, plank-road, and bridge companies, shall, within thirty days after * * * * make return in writing to the auditor general * * * * stating fully and particularly the number of tons of freight carried over, through, or upon the works of said company for the three months immediately preceding each of the above mentioned days, and each of said companies, except as aforesaid, shall, at time of making such return, pay to the State treasurer * * * * * "

The eighth section provides, among other things, that "in addition to the taxes provided for as aforesaid, every railroad, canal and transportation company liable to tax upon tonnage, under the preceding section of this act, shall pay to the Commonwealth a tax of three-fourths of one per centum upon the the gross receipts of said company. The said tax shall be paid semi-annually upon the 1st days of July and January, and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer, or other proper officer of the said company, to transmit to the auditor-general at the dates aforesaid, a statement under oath or affirmation of the amount of gross receipts of said company *derived from all sources* during the preceding six months."

While the provisions of the remaining sections lend strength to the argument about to be advanced, it is

not deemed necessary to make special reference to them.

In the case of the United States *vs.* Bassett 2d Story's Reports, 389, which case involved the construction of a statute, Judge Story, in his opinion, uses the following language which will be found very pertinent to the present inquiry : " Certainly," he says, " we are " to give effect to all the words of a statute, if by a rea- " sonable interpretation that can fairly be done, and it " involves no repugnancy to other provisions, and is " not inconsistent with the apparent objects of the " statute, but then the qualifications of the rule are " most material to be observed. The interpretation " must, in itself, be reasonable, it must not be such as " apparently was not, or *could not*, be within the legis- " lative intendment * * * * *a fortiori* such an " interpretation is not to be adopted to give effect to " particular words which will require, on the part of " the court, the introduction of *new provisions and auxiliary clauses which the statute neither points out, nor even hints at, and yet which are indispensable to makes uch interpretation sensible or practicable.*"

Again, it is a cardinal rule of construction, founded upon common as well as legal sense, that the statutes of a State are presumed to have been intended by the Legislature to be in their operation only co-exteusive with the limits of the political sovereignty of the State, and not to be intended to apply to persons, subjects and things beyond the frontiers of the State, and over which it can exercise no jurisdiction to compel obedience to its laws.

It cannot be supposed that a State intends to enact laws operative beyond its jurisdiction, and depend for enforcing obedience upon the contingency of at some time finding the subject of the laws so within its jurisdiction, that it may compel obedience by way of ransom, so to speak.

In Bond *agst.* Jay, 7 Cranch, 353, Chief Justice Marshall says : " It is so unusal for a Legislature to em-

"ploy itself with framing rules which are to operate "only on contracts, made without their jurisdiction, be- "tween persons residing without their jurisdiction that "courts can never be justified in putting such a con- "struction on their words if they admit of any other "interpretation which is rational and not too much "strained."

In Farnham *agst.* Blackstone Canal Company, Judge Story says: "Now, the general rule certainly is "that every legislative act ought to receive a reason- "able construction, and it cannot be presumed that a "Legislature authorizes any act to be done in a foreign "territory when that act is beyond the reach of its "proper jurisdiction or sovereignty. Every Legisla- "ture, however broad may be its enactments, is sup- "posed to confine them to cases or persons within the "reach of its sovereignty." Now it is submitted.

First.—That the act in question cannot be made applicable to the plaintiff company without such a construction, "as will require on the part of the court "*the introduction of new provisions and auxiliary clauses* "*which the statute neither points out nor even hints at,* "*and yet which are indispensable to make such interpre-* "*tation sensible or practicable.*"

Second.—That it cannot be made applicable to the plaintiff company without assuming that the Legislature *intended to embrace within its provisions, on a very extensive scale, persons and things entirely beyond the reach of its sovereignty.*

In the first place, then, the act, by its very terms, applies to corporations only so situated as that the Legislature, in the exercise of a lawful jurisdiction, may impose a tax upon the entire capital stock of the corporation, its entire net and gross receipts, and coerce the payment by an abrogation of its charter if necessary. *And on the other hand it follows that it does not apply to corporations not so situated.*

The Erie Railway Company is a corporation that cannot, by any possibility, be embraced in the former category; for, as a part of the price paid for its right of way, it is taxed upon a specified amount of its capital stock, represented by the cost of construction of that portion of the road lying in the State of Pennsylvania. This reason is sufficiently conclusive without the additional one that the State of Pennsylvania cannot be presumed to have attempted to drag into its power, for the purpose of taxation, the whole of the entire capital stock of a corporation exercising a mere right of way over its territory for an adequate equivalent agreed upon and paid, merely because it might suppose it had the power to compel compliance by a threatened confiscation of its property.

In the second place, the mandatory provisions directed to the officers of the corporation, as well as the nature of the penalty for noncompliance, makes it manifest that the statute was only intended to apply to corporations maintaining their chief offices and principal establishments in that State.

In the third place, the very description of the corporations subjected to the tax, shows that only those are embraced, the business of which is conducted upon and over ways and works situate within the territory of the State. It embraces railroad companies, steamboat companies, canal companies, slack-water navigacompanies, turn-pike and bridge companies and other corporations upon whose works freight may be transported; and it embraces the entire gross receipts of these corporations from every source. Invoking the argument, *ex absurdo*, it is submitted that it would be a most absurd construction to hold that the statute intended to describe or embrace any other corporations of this character than those whose works thus described are essentially local, and substantially co-terminus with the jurisdiction of the State.

Can it be supposed to embrace a canal or slack-water navigation company of another State? Or a steamboat company chartered under the laws of another

State, and whose boats, in the regular course of its business, may from time to time touch at Pennsylvania ports? Can it, with any more propriety, be supposed to embrace a railroad company of the State of New York, which has bought and paid for a right of way over a mile of its territory for the purpose of flanking a mountain obstructing its way, from one end of the State of New York to another. And if such a company would not be brought within its provisions, because it had obtained a right of way over one mile of territory, would it be regarded as within the scope of its provisions because it had bought the right of way over ten miles? Could any argument be predicated upon such distinctions? It is obvious that none could be, and hence, the case is just as strong against the plaintiff company as it would be if it occupied half or any fraction of a mile of territory, and no stronger.

In the fourth place, it must be conceded that if the plaintiff company is within the purview of the act in question, it is liable to a tax upon any dividend declared upon its entire capital stock and for a tax upon the cash value of the capital stock in case no dividend is earned or declared, and for any default in the payment of these taxes, its directors, managers, or treasurers, are personally liable to the State of Pennsylvania. It is also liable, by the express terms of the act, if liable at all, in addition to these taxes, to a tax of one per-centum upon the entire gross receipts of the company "*derived from all sources*," and yet, to hold it so liable, would be admitted on all hands to be absurd, and the State of Pennsylvania has not pretended, and does not pretend, that it is so liable.

It is submitted, then, that it is not possible to bring the plaintiff company within the purview of this Statute without doing what the Supreme Court of the State of Pennsylvania substantially has done, namely, by a judicial enactment to make an additional section to the statute, containing the necessary provisions and limitations to make it so applicable, and which,

in the language of Judge Story, "will require on "the part of the court the introduction of new pro- "visions and auxiliary clauses which the statute neither "points out nor even hints at, and yet which are indis- "pensable to make such interpretation sensible or "practicable."

This new section would not impose a tax upon the entire capital stock of the Erie Railway Company or upon the dividends declared upon the entire capital stock; it would not impose a tax upon the entire gross receipts of the corporation derived from all sources; it would not authorize a sale of the capital stock as a penalty for the non-payment of the tax, and it would not impose a personal liability upon the officers and directors of the corporation. All it could do, by way of coercion, or would attempt to do, would be to sequester that part of the property which might be found within the jurisdiction of the State, and revoke its license and annul its easements and privileges.

Pray what authority does the court find in the statute for levying a tax on gross receipts "*apportioned according to the length of road within our borders*"?

The statute prescribes no such standard of measurement and indeed none of any kind applicable to this Company. Moreover in such a standard there would be no justice or propriety. The gross receipts of the company are the product of all its franchises, faculties, rights, privileges, labors, expenditures of every kind. None of these are conferred, authorized granted, or protected by the State of Pensylvania. To this state the company is under no obligation, except for a right of way for a few miles with the incidental right of protection and for which it paid the stipulated price.

The court cannot make the radical changes in the statute necessary to make it applicable to the plaintiff company, and without them, it is submitted to be a clear proposition, that it is wholly inapplicable and there are the best of reasons for supposing that it was never intended to apply to the company. Indeed

it is plain from another point of view that the plaintiff company is not a corporation doing business within the State of Pennsylvania in the sense intended by the statute in question. It is a New York corporation organized for the purpose of constructing and operating a road from the eastern to the western frontier of the State, connecting the city of New York with the great lakes. To avoid the engineering difficulties presented by a high mountain lying in its route through the State of New York it purchased of the State of Pennsylvania a right of way over a strip of its territory. *What business it does in the State of Pennsylvania is merely incidental to the enjoyment of the right of way so purchased.* In fact, it does no business in the State of Pennsylvania by reason of the right of way so acquired except that which the State required it to do as a part of the consideration for the right of way. The business accommodation afforded to the citizens of the State of Pennsylvania by the company, and the amount of business supplied to the company by the citizens of Pennsylvania, would of course have been substantially the same if the road had been just over the line and within the jurisdiction of the State of New York.

II.

The State of Pennsylvania could not lawfully subject the plaintiff company to the whole or part of the obligations imposed by this statute.

15 Wallace, 232, 282.

As an introduction to what is now to be advanced it may be observed that the argument will apply with

the same force against the intention to impose upon the plaintiff company the tax in question as upon the power of the State to do so.

It already appears that the Erie Railway Company is a corporation created and existing under and by virtue of various statute laws of the State of New York.

It was created for the purpose of constructing an extensive and important line of railway from the city of New York to Lake Erie. It was discovered that certain mountain ranges in that State presented grave engineering difficulties which, although not insurmountable, it was very desirable if possible to avoid. They could be avoided if the right of way for a short distance could be acquired over the territory of the State of Pennsylvania. It being apparent that the construction of this important avenue of commerce was in due degree as beneficial to the citizens of the State of Pennsylvania as to those of the State of New York, the right of way first asked for through the county of Susquehanna was freely and gratuitously given. Subsequently it became, for a similar reason, desirable that the company should have a still further right of way for a few miles over a rugged and barren region in the county of Pike in the State of Pennsylvania.

A more thrifty set of legislators in the mean time having succeeded the body which made the first concession, they availed themselves of the necessities of the company to drive a hard bargain with it.

The price charged the company for the mere privilege of availing itself of the State's power of eminent domain, in the exercise of which it might be able to acquire the necessary easement, was :

First.—The annual payment of $10,000 into the Treasury of the State, and

Second.—The payment of a tax on the stock of the company to an amount equal to the costs of the construc-

tion of that part of their road situate in Pennsylvania in the same manner and at the same rate as other similar property was or might be subjected to.

Third.—In addition to this, various duties, obligations and restrictions were imposed upon the company.

The grounds of the decision of the Supreme Court of Pennsylvania in this case are contained in the following extract from the opinion :

"It is not pretended that there is any release of the "legislative power, but it is contended that as the "company have agreed to pay, and the State to ac- "cept these sums, it is necessarily implied that no "more should ever be exacted. So it might well be "argued if any special taxation were imposed upon "this company, for that would be to require an addi- "tional price beyond the terms of the contract, but "the question whether they shall be subject to a gen- "eral tax laid upon all railroad and transportation "companies in the Commonwealth is an entirely dif- "ferent one. There is no principle better established, "and it requires no long array of cases to prove it, "than that no surrender of the general power of tax- "ation by any legislative act can be implied—it must "be express"—citing Providence Bank *agst.* Billing, 4 Peters, 514.

Bank *agst.* Commonwealth, 10 Bar., 442.

To this list of authorities may be added the case of the Delaware R. R. tax, 18 Wallace, 206, where the rule referred to by the learned judge in support of his opinion is stated in as vigorous terms as the English language admits of.

With great deference, however, it is submitted that the case at bar does not in the remotest degree involve the rule referred to in the cases cited, nor is there the slightest resemblance between the facts of this case and the facts in any of the cases cited; all of those cases involve the question as to the power of the

State for the purpose of taxation *over corporations of its own creation deriving their existence from the government of the State and exercising their respective functions within the territorial limits of the State.*

The question presented in all these cases has been whether, by any contract with the corporation, at the time of its creation or subsequently, the State has relinquished, limited or restricted its lawful general power of taxation, and it has been held, in accordance with sound policy and right reason, that such relinquishment, limitation or restriction is not to be implied from the fact that a particular tax was imposed upon the corporation at the time it was created or from any other doubtful and ambiguous circumstances, and that the intent of the Legislature in the premises must very clearly appear to have been to do so.

The learned judge who delivered the opinion of the Supreme Court of the State of Pennsylvania starts out with the fundamentally erroneous assumption that the company sustains the same general relation to the State as "all railroad and transportation companies in "the Commonwealth," and then, upon that assumption, which is demonstrably erroneous, and begging at once the question whether upon the sound and general principles of construction, the statute was ever intended to apply in any respect to the plaintiff company, he proceeds to apply to it the rule as laid down in the authorities cited touching the limitation of the power of the State for the purpose of taxation over its own citizens and corporations.

The plaintiff company is not a Pennsylvania corporation. It does not, in any proper sense exist in the State of Pennsylvania, or exercise its functions and franchises within the State of Pennsylvania. It owes none of its chartered rights or privileges to the State of Pennsylvania. It has a railroad track a few miles in length on the soil of the State of Pennsylvania, with the necessary appurtenances which it bought of private owners and paid for. Over this line of track it

runs its trains on their way from west to east, and east to west. For the convenience of the citizens of the State of Pennsylvania, and those of its patrons having business in the State of Pennsylvania, it stops at points on this part of its track and takes up and puts down passengers and freight.

Let us enquire, therefore, what obligation the company is under to the State of Pennsylvania.

If a private citizen of the State of Pennsylvania happen to own the strip of land occupied by the Erie Railway Company, he could, without violating any general principle of law, or any known statute law of the State of Pennsylvania, build a plank road on it, or he could lay down rails on it and draw cars over them by horses or by steam, and carry anybody or anything in his cars if he pleased, and provided he so conducted his business as not to make it a nuisance to his neighbors, no one would have the right to complain.

A natural person, citizen of the State of New York, having the same right to acquire land in the State of Pennsylvania that a citizen of that State has, might do exactly the same thing if he owned the necessary strip of land. Neither the land, nor the rails, nor the cars, nor the motive power by which they are propelled, nor the right to propel them, is acquired from or granted by the State of Pennsylvania in either case, but from private owners, whether citizens of the State of Pennsylvania or otherwise. But under the constitution, the State of Pennsylvania can keep foreign corporations out of its territory altogether if it pleases, and if either a foreign or a domestic corporation or natural person has occasion to exercise the right of eminent domain which resides alone in the State, the right can only be obtained from the State, and upon such terms as the State sees fit to impose. Under these circumstances it so happened that the Erie Railway Company had occasion to ask the State of Pennsylvania for liberty to pass over a small strip of its territory and to exercise the right of eminent domain

to the extent necessary to acquire from private owners an easement for the required right of way, and the two parties, the State and the corporation, entered into negotiations to this end.

Now, instead of having to consider the grave question of public policy and constitutional law involving the power of the State over *its own natural and artificial persons for purposes of taxation*, we have to construe a mere contract of barter or bargain and sale, and find out what price the vendor exacted and agreed to take in full payment, and what price the vendee agreed to pay and has paid, and this is the view of the case originally taken by the Supreme Court of the State of Pennsylvania itself.

In the case of the New York & Erie Railroad Company *against* Sabin, 26th Pa. State Reports, 244, the Court thus defined the relations of the State to this corporation: "We are of opinion that the annual "tax of $10,000 imposed upon the company by the "fifth section of the Act, 22d March, 1846, was in- "tended to compensate the Commonwealth for the "right of way through her territory, and that the tax "imposed by the sixth section of said act upon that "portion of the company's stock which represents the "costs of construction in Pennsylvania was meant to "be in lieu of all other taxation of the property of the "company within our borders."

Now it is a truth that no sophistry can mask or conceal, that this was intended by the court to be a general and exhaustive statement of the liability of the company to the State, present and future, for the privileges which it exercised within the State; for, surely, nothing can be more comprehensive than the words "in lieu of all other taxation of the property of the "company within our borders," and, that the decision of the Supreme Court of that State now in question directly and in terms overrules this decision. Moreover, cannot it be supposed, that in view of this decision apt and pertinent words would not have been employed

to bring the plaintiff company within the scope of the statute if such had been the intention?

It cannot be too often repeated that the real case is by no means the case assumed by the Supreme Court for the purpose of its decision. The company, to avoid certain engineering difficulties, asked liberty to acquire title to and run its cars over a small strip of land in the State of Pennsylvania, and asked the State how much it would take for the privilege. The State said in reply, "You shall give to our citizens the same privileges which you give to the citizens of your own State in the transaction of business with you. You shall allow certain of our own railroad corporations to make connections with you. Upon that amount of your stock which represents the cost of your road in this State you shall allow us to tax you just the same as though it belonged to one of our own corporations, and in addition to all this, you shall pay us $10,000 a year." No one will deny that this was a good round sum, but it has been paid, and certainly the plaintiff company had the right to suppose that it was full payment for the privilege which it bought, for it was the only price stipulated for.

If the company is mistaken in this, it would doubtless be better for it, however great the cost, to abandon its right of way in the State of Pennsylvania, take up its rails, overcome the engineering difficulties and go over the mountain, rather than submit to the perpetual and exorbitant exactions of the State, resting upon no just foundation but solely upon its power of coercion.

But it is submitted, in conclusion, that the Legislature of the State of Pennsylvania has not manifested any intention to overrule the first decision of its Supreme Court on this point. The company cannot be brought within the scope of the act in question without judicial legislation under the thin guise of judicial interpretation of the most extravagant character. Nor, having thus been brought within the terms of the statute, even then can the company be subjected

to the tax in question without entirely ignoring the fact that the relations between the Erie Railway Company and the State were and are merely those of buyer and seller, and proceeding upon the manifestly erroneous assumption that the company sustains the same relation to the State of Pennsylvania that corporations created by and exercising their functions within that State sustain to it.

III.

The judgment of the Supreme Court of the State of Pennsylvania in this case should be reversed.

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Attorneys for Plaintiff in Error.

Supreme Court of the United States.

THE ERIE RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

[redacted]it of Error to the Supreme Court of the State of Pennsylvania.

BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA.

LYMAN D. GILBERT,
Deputy Attorney General.

SAMUEL E. DIMMICK,
Attorney General of Pennsylvania.

Supreme Court

OF THE UNITED STATES.

THE ERIE RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.
Defendant in Error.

Writ of Error to the Supreme Court of the State of Pennsylvania.

Brief of the Commonwealth of Pennsylvania.

This is an appeal by the Erie Railway Company from a judgment of the Supreme Court of Pennsylvania, affirming the right of the Commonwealth to impose a tax by general law upon the gross receipts of the company.

STATEMENT.

The question presented for the opinion of this Court arises in the following manner:

On 1st May, 1868, the Legislature of Pennsylvania passed an act of Assembly, entitled "An Act to revise, amend and consolidate the several laws taxing corporations, brokers and bankers." The eighth section, printed on page twenty of the Record, is a rescript of that section of the act of Assembly of Pennsylvania of 23d February, 186[illegible], which this Court considered and adjudged constitutional in the case of Reading Railroad Company *vs.* Pennsylvania, 15 Wallace, 284. This section imposed a tax of three-fourths of one per cent. upon the gross receipts of "every railroad, canal and transportation company liable to tax upon tonnage under the preceding section of this act."

The companies made liable to tonnage tax by the section referred to, are "every railroad company, canal company and slackwater navigation company, and all other companies now or hereafter doing business in this State, and upon whose works freight may be transported, whether by such company or by individuals, and whether such company shall receive compensation for transportation and toll, or shall receive tolls only, except turnpike, plank road and bridge companies."

In pursuance of this section, the fiscal officers of the Commonwealth settled an account against the Erie Railway Company for taxes on the entire gross receipts of certain roads incorporated by the State of Pennsylvania, and lying wholly within her borders, which are operated by the Erie Railway Company and called its branches, and for taxes upon $\frac{42}{45}$ parts of the gross receipts of the main line of the company, that being the fraction which represented the proportion of the main line within the limits of the Commonwealth.

The account thus settled embraces the taxes due from these two sources, for the period of time between 1st May, 1868, and 30th June, 1873, and included certain penalties which are by law imposed upon delinquent corporations. From this account the company appealed to the court of common pleas of Dauphin county, in the mode prescribed by statute, and assigned as ground of complaint the objections which are found on the first, second and third pages of the record.

These were overruled by that court, and a verdict was obtained for the Commonwealth, $76,788 20, the amount of her claim, and the decision thus made having been sustained by the opinion of the Supreme Court, the company has taken a writ of error from their decree to this court.

ARGUMENT

This court having decided in the case of the Reading Railroad Company *vs.* Pennsylvania, 15 Wallace, 284, "that the statute of a State imposing a tax upon the gross receipts of railroad companies, is not repugnant to the Constitution of the United States, though the gross receipts are made up in part from freights received for transportation of merchandise from this State to another State, or into this State from another," no question is suggested, or can arise upon the constitutionality of the tax imposed by the act under examination.

The only subject presented for consideration is this: Can the Erie Railway claim exemption from this character of taxation?

In denial of the right of the Commonwealth to impose this tax upon it, five objections were urged, which were passed upon by the court of Common Pleas of Dauphin county, Pennsylvania, and by the Supreme Court of that State, and will be found on pages 1, 2 and 3, of the record. These will be considered in the order of their statement.

The first one alleges, in substance, that the company is not subject to the tax in dispute, because it was not "doing business" in the State, in the sense intended by that act, but was, as regards most of its freight and passengers, merely exercising the right of way through the State. This objection the Supreme Court decided to be incorrect, and their decision upon this point, it is respectfully submitted, is final and conclusive upon this court.

For the question raised by the objection is not whether the act of May 1, 1868, violates the Constitution and the laws of the United States, but whether the provisions of a statute of Pennsylvania are of sufficient scope and extent to apply to and include the Erie Railway Company?

Upon this subject—the construction of a State statute—where no infraction of the Federal laws or Constitution is alleged or suggested, the jurisdiction of the courts of the Commonwealth is complete and conclusive, and their interpretation is not a proper object for examination and review even in this court.

Any other doctrine would interfere with and diminish the reserved rights of the States, and change the structure and character of our government.

The following are some of the decisions of the Federal courts which sustain this position:

Randall *vs.* Brigham, 7 Wallace, 630.

"The construction given to a provision of the Constitution of a State, by the highest court of that State, not called in question by any conflicting decision of that court, is conclusive upon this court."

Van Bokelen *vs.* R. R. Co., 6 Blatch, C. C. R., 379.

"When a court of the United States is called on to construe the laws of a State in litigation between parties before it, it is the duty to follow the decisions of the courts of the State as to such construction."

Blossburg R. R. *vs.* Tioga R. R. 6 *Ib.*, 387.

Olcott *vs.* Board of Fond Du Lac Co. American Law Times Reports, 47.

"The established rule is that the Federal courts are to administer the laws in cases where they apply; and the uniform practice has been to consider a judicial interpretation, placed upon a statute, the same as if incorporated within the language of the statute itself. When the highest judicial tribunal of a State has placed a construction upon a statute of a State, that construction will be adopted by this court."

Gut *vs.* State. 9 Wallace, 35.

"The decision of the highest court of a State, that an act of the State is not in conflict with a provision of its Constitution, is conclusive upon this court."

Williams *vs.* Kirtland. 13 Wallace, 306.

"The construction of a State law upon a question affecting the titles to real property in the State, by its highest court, is binding upon the Federal courts."

King *vs.* Wilson. 1 Dillon, 555.

"The Federal courts sitting in a State, follow the latest decision of the highest tribunal of the State as to validity; and the case is an exceptional one in which the Federal court is justified in holding a statute void, because in conflict with the Constitution of the State after the Supreme Court has pronounced it valid."

"The latest decision of the State Supreme Court, holding that the citizen might constitutionally be taxed and the proceeds given as a gratuity or donation to aid in the building of the roads of private railway companies, was followed, although that decision overruled a long and settled course of adjudication by the same tribunal the other way, and the prior decisions were regarded as sound expositions of the Constitution of the State."

Rowan *vs.* Runnels. 5 Peters, 134.

"Undoubtedly this court will always feel itself bound to respect the decision of the State courts, and from the time they are made will regard them as conclusive in all cases, upon the construction of their own Constitution and laws."

Bank of the United States *vs.* Daniels *et al.* 12 Peters, 32.

"This court, in accordance to a steady course of decision for many years, feels it to be an incumbent duty, carefully to examine and ascertain if there be a settled construction by the State courts of the statutes of the respective States, where they are exclusively in force; and to abide by, and follow such construction when found to be settled."

Satterlee *vs.* Matthewson. 2 Peters, 380.

"We intend to decide no more than that the statute objected to in this case is not repugnant to the *Constitution of the United States*, and unless it be so, this court has no authority, under the twenty-fifth section of the judiciary act, to re-examine and to reverse the judgment of the Supreme Court of Pennsylvania in the present case."

Watson *vs.* Mercer. 8 Peters, 88.

"The authority of this court to examine the constitutionality of the act of 1826, extends no further than to ascertain whether it violates the Constitution of the United States; the question, whether it violates the Constitution of Pennsylvania, is, upon the present writ of error, not before the court."

Jackson *vs.* Lamphire. 3 Peters, 280.

"This court has no authority, on a writ of error from a State court, to declare a State law void on account of its collision with a State Constitution; it not being a case embraced in the judiciary act, which alone gives power to issue a writ of error in this case, and will therefore refrain from expressing any opinion on the points made by the plaintiff's counsel, in relation to the Constitution of New York."

Commercial Bank of Cincinnati *vs.* Buckingham's Executors, 5 Howard, 317.

"It is the peculiar province and privilege of the State courts to construe their own statutes, and it is no part of the functions of this court to review their decisions, or assume jurisdiction over them, on the pretence that their judgments have impaired the obligation of contracts The power delegated to us, is for the restraint of unconstitutional legislation by the States, and not for the correction of alleged errors committed by their judiciary."

Christy *vs.* Pridgeon. 4 Wallace, 196.

"The interpretation within the jurisdiction of a State of a local law, becomes a part of that law, as much so as if incorporated in the body of it by the Legislature. If different interpretations are given in different States to a similar law, that law, in effect, becomes by the interpretations, so far as it is a rule for action by this court, a different law in one State from what it is in the other."

The lessee of Henry Neal *vs.* Asa Green. 1 M'Lean, 18.

"The courts of the United States adopt as a rule of decision the settled construction of the statutes of the State by its Supreme Court."

Green *vs.* Lessee of Neal. 6 Peters, 291.

Dike *vs.* Kuhns. 5 Pitts, L. J., 239

Suydam *vs.* Williamson. 24 Howard, 427.

Leffingwell *vs.* Warren. 2 Black, 599.

Smith *vs.* Houtz. 15 Pitts, L. J., 409.

The first objection made to the right of the Commonwealth to claim this tax is therefore no longer an element in this case.

The second objection is, in effect, that the imposition of this tax would be an infraction of the Constitution of the United States, because it impairs the obligation of contract entered into by the Commonwealth, and the Company, by the enactment and acceptance of certain acts of Assembly, specified on pages two and three of the Record.

This objection involves an examination of the relations which exist between the parties in interest, and these we shall examine as they appear upon the acts referred to, in order to ascertain their rise, extent and consequence.

The Erie Railway Company is a corporation of the State of New York, created in 1832, under the name of the New York and Erie Railroad Company.

As the laws of New York operate only within her borders, the corporation which she created could have no life and power beyond them, except so far as the comity existing between the States allowed. And State comity did not extend to and permit the occupation of territory by a foreign corporation.

Bank of Augusta *vs.* Earle, 13 Peters, 519.

Runyan *vs.* Coster, 14 *Ib.* 122.

The Commonwealth of Pennsylvania is and was a sovereign State with power to exclude from her soil the corporations created by the laws of another State, or to prescribe at pleasure the conditions of their entrance. This was the position and relation of the parties to this cause prior to the 16th day of February, 1841.

Upon that day the Legislature of Pennsylvania passed an act, which will be found on page 8 of the Record, giving the company the right to extend its road through Susquehanna county.

This act has never been replaced or repealed, and it is by virtue of its provisions that this company now claims and enjoys the right of passing through this county.

The act, it will be noticed, is silent on the subject of taxation. It was passed by the Commonwealth, accepted and acted upon by the Company, without any stipulation or agreement in regard to it.

The Company had now obtained recognition as a corporation from the Commonwealth of Pennsylvania; a place upon her statute books; the right of way through part of her territory, with definite points of entry and departure; the privilege to take and hold, after making compensation therefor, the property of her citizens for its corporate purposes, and became entitled to claim from the Commonwealth the exercise of her sovereignty for the protection of its rights within her borders. In return for these privileges, the company became, within the limits of the Commonwealth, her creature, not merely participating in the benefit of her laws, but subject to any burdens they might impose. For "the sovereignty of the State extends to every thing which exists by its own authority, or is introduced by its permission." M'Culloch *vs.* Maryland, 4 Wheaton, 316. Weston *vs.* City Council, 2 Peters, 449. Osborne *vs.* Bank of United States, 9 Wheaton, 738.

"A State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, when that jurisdiction is not surrendered or restrained by the Constitution of the United States." City of New York *vs.* Miln, 11 Peters, 102.

No stipulation was made in regard to the taxation of the company. No agreement was entered into that it should not exceed a fixed limit, or extend beyond specified objects. That that was, therefore, matter for such legislation as the Commonwealth in the proper exercise of her sovereignty might chose to adopt, cannot be denied since the repeated affirmance, by this court, of the decision pronounced by Mr. Chief Justice Marshall, in the case of Providence Bank *vs.* Billings, 4 Peters, 514.

This was the commencement of relations between the Commonwealth and the company, and they continued unchanged for more than five years. On the 26th March, 1846, the Legislature passed an act, printed on page eleven of the Record, and as it is the ground on which the argument of the company mainly rests, it is proper to make the following observations which its reading naturally suggests:

1. More than five years before its passage the Erie Railway Company had secured a corporate recognition from the Commonwealth of Pennsylvania, the right of way through the county of Susquehanna, and had become liable to bear such burdens of taxation as she, in the exercise of her discretion, might impose.

2. This act does not enlarge, change or lessen the right the company possessed to pass through the county of Susquehanna, but merely adds to it the additional right to pass through another county of the Commonwealth, namely, the county of Pike.

3. This act does not repeal, replace or supercede the act of 1841. It treats of different subject matter. It confers new privileges, and in no way mentions or affects those already granted and enjoyed.

4. The act of 1841 is still in force, and the right of way through the county of Susquehanna is held and enjoyed under its provisions.

5. If the act of 1846 imposes any condition or restriction upon the taxing power of the court, the condition and restriction only apply to the taxation imposed upon the franchises granted by that act. They cannot have a retrospective effect and qualify the right of the Commonwealth to tax this company upon franchises which were granted and accepted without any condition or restriction whatever upon this subject.

6. Sections five and seven of this act show that if a limitation of the right of taxation was intended, it formed the condition upon which the company should be taxed upon the particular privilege conferred by this act, which was the right to pass through Pike county.

7. For a failure on the part of the company to comply with the conditions which this act imposed upon it, these sections attach a penalty of forfeiture, which extends only to the privilege contained in the act, but does not apply to the privileges granted by the act of 1841.

They thereby show that if any condition is placed upon the taxing power, it is of no greater extent than the condition placed upon the company, and neither reaches beyond the subject matter of the grant.

8. If the grant made by this act was coupled with the condition, as the company claims, that the Commonwealth's power of taxation should be restricted, this condition does not extend beyond the subject matter granted, which was the right of way through Pike county.

The decision of this court in Philadelphia and Wilmington Railroad Company *vs.* Maryland, 10 Howard 376; Tomlinson *vs.* Branch, 15 Wallace 460, and Minot *vs.* Philadelphia, Wilmington and Baltimore Railroad Company, 18 *Ib.*, 206, amply support this view.

Among the questions there adjudged, was this: What are the rights of railroad companies formed by the consolidation of smaller companies, of which one, in each instance, possessed the privilege of exemption from taxation. The opinion of this court was, that the exemption only attached to the property to which it originally belonged, and did not extend to the other property of the consolidated company, so as to relieve it from taxation.

The facts of this case are similar. The Erie Railway Company holds corporate privileges under different acts of Assembly.

The act of 1841, gives it the right of way through Susquehanna county, and makes no restriction of the right of the Commonwealth to tax its property.

The act of 1846, gives it the right of way through Pike county, and restricts, it is claimed, the power of State taxation.

It is clear, that if the road through Susquehanna county, authorized by the act of 1841, and the road through Pike county, authorized by the act of 1846, were not united, that the power of the Commonwealth to tax the road in Susquehanna county would be absolute and unqualified.

It is equally clear that a union of these portions of road did not, to the detriment of the State, extend to the road in Susquehanna county, a privilege which the company claims it obtained in respect to the road in Pike county.

Otherwise the Commonwealth, by increasing the rights of the corporation will have, in some mysterious way, diminished its own.

That the portions of the road may have been built at the same time, and by the same company, and do now form one continuous line of way, does not affect this position. They were authorized by different acts of Assembly, which varied in the rights they gave, and the conditions they imposed; and no act of the company, without the consent of the Commonwealth, can enlarge these rights or remove these conditions, under which it received these different and separate public grants.

We have thus traced the relations which exist between the Commonwealth and the company by virtue of these acts of Assembly, and have, to some extent, considered their bearing upon the subject of State taxation.

It is true there has been subsequent legislation, but as it in no wise changes or disturbs the relations thus created, except so far as it transfers to the Erie Railway Company the franchises enjoyed by the New York and Erie Railroad Company, it need not be considered, nor our attention be withdrawn from the examination of the legal effect of the acts referred to upon the right of the Commonwealth to collect the tax in question from the Erie Railway Company.

That a Legislature has sufficient authority, unless it be prevented by the Constitution of its State, to make a valid and binding contract to surrender or limit the power of the State to tax a corporation is admitted by the Commonwealth. But she denies that she, in any way, entered into any contract, compact or agreement with this company to limit or surrender her power of taxing its property and the claims:

1. If the existence of any contract, compact or agreement of this kind be alleged, the burden of proving it rests upon the company, and that in the absence of clear and unambiguous proof, its existence cannot be presumed or inferred.

Providence Bank *vs.* Billings, 4 Peters, 514.

"That the taxing power is of vital importance; that it is essential to the very existence of the government; are truths which it cannot be necessary to re-affirm. They are acknowledged and asserted by all. It would seem that the relinquishment of such a power is never to be assumed. We will not say that a State may not relinquish it; that a consideration sufficiently valuable to induce a partial release of it may not exist; but as the whole community is interested in retaining it undiminished; that a community has a right to insist that its abandonment is not to be presumed in a case in which the deliberate purpose of the State to abandon it does not appear."

Philadelphia and Wilmington Railroad Company *vs.* Maryland, 10 Howard, 376.—"This court, on several occasions, has held that the taxing power of a State is never presumed to be relinquished, unless the intention to relinquish is declared in clear and unambiguous terms."

Insurance Company *vs.* Debott, 16 Howard, 416.—"The grant of privileges and exemptions to a corporation are strictly construed against the corporation and in favor of the public. Nothing passes but what is granted in clear and explicit terms. And neither the right of taxation, nor any other power of sovereignty, which the community have an interest in preserving, undiminished, will be held by the court to be surrendered, unless the intention to surrender is manifested by words too plain to be mistaken."

Bank *vs.* Skelly, 1 Black, 436. "The rule of construction is strict against the corporators and in favor of the public; and neither the right of taxation, nor any other power of sovereignty, will be held to have been surrendered, unless such surrender has been expressed in terms too plain to be mistaken."

Gilman *vs.* City of Sheboygan, 2 Black, 510. "The fact that a State, by her Legislature, has stripped herself of any portion of her sovereignty, is not to be assumed unless the language used is too clear to admit of doubt.

Charles River Bridge *vs.* Warren Bridge, 11 Peters, 420; Gordon *vs.* Appeal to Court, 3 Howard, 133.

2. That the acts, referred to by the plaintiff in error, do not contain express words of surrender, and without them, the authorities already cited show there is no relinquishment by a State of her right to tax a corporation.

3. This court has never decided that a State parted with its power of taxation unless it used unmistakable words of surrender.

This will appear from a review of the following cases, which, it is believed, present every adjudication in which this court has held that there was a surrender or abridgment, by a State, of its taxing power:

New Jersey *vs.* Wilson. 7 Cranch, 164.
Gordon *vs.* Appeal Tax Court. 3 Howard, 133.
Acheson *vs.* Huddleson. 12 Howard, 293.
Bank *vs.* Knoop. 16 Howard, 369.
Dodge *vs.* Woolsey. 18 Howard, 331.
Bank *vs.* Skelly. 1 Black, 436.
M'Gee *vs.* Marthias. 4 Wallace, 143.
Hoffman *vs.* City of Quincy. 4 Wallace, 535.
Home of Friendless *vs.* Rouse. 8 Wallace, 430.
Washington University *vs.* Rouse. 8 Wallace, 439.
Wilmington Railroad *vs.* Reid. 13 Wallace, 264.
Tomlinson *vs.* Branch. 15 Wallace, 460.
Humphrey *vs.* Pegues. 16 Wallace, 244.

4. The act of 1846 nowhere declares that the tax it imposes shall constitute the only kind of taxation to which this company shall be subject, or be in lieu of all other taxation, and therefore, it does not prevent the Commonwealth from passing a subsequent general law imposing a different character of taxation upon the company.

To support ~~of~~ this position the following decisions will, it is believed, be found sufficient:

In 1846 the Supreme Court of Pennsylvania held, in the case of Commonwealth *vs.* Easton Bank, 10 Barr, 451, which has been cited with approval by this court, that "a bank chartered under the act of 1824, which

prescribes the payment of a certain tax on dividends declared, is subject to a subsequent general law, which increases the rate of taxation, although its charter had not then expired."

The case of Minot *vs.* Philadelphia, Wilmington and Baltimore Railroad Company, decided by this court in 1873, and reported in 18 Wallace, 206, presented certain facts, of which the following are common and pertinent to this inquiry: The defendant, a railroad corporation, was formed by the union of companies incorporated by different States.

One of these roads was created by the Legislature of Delaware, and was subjected by its charter to a tax of eight per cent. on dividends exceeding six per cent. of the capital stock actually paid in.

In 1835 the Legislature of Delaware authorized the consolidation of this road with a road in the State of Maryland, repealed the tax imposed upon dividends, by the previous law, and provided "that the consolidated company should pay annually into the treasury of the State a tax of one-quarter of one per cent. on its capital of four hundred thousand dollars, the tax to be paid in semi-annual instalments, on the first of January and July of each year."

A further consolidation with other roads was effected under acts of the Legislatures of Pennsylvania, Maryland and Delaware. The latter State provided in its act of consolidation, that "the respective companies should constitute one company and be entitled to all the rights, privileges and immunities which each and all of them possess, have and enjoy under and by virtue of their respective charters."

In 1869, the Legislature of Delaware passed an act imposing various taxes, among which were a tax on the net earnings of railroad companies and a tax upon the cash value of their capital stock.

Mr. Justice Field delivered the opinion of this court, deciding that these taxes were constitutional, and after observing that a "surrender of taxation, when claimed, must be shown by clear unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power," and that "if a doubt arise as to the intent of the Legislature, that doubt must be solved in favor of the State," said:

"If now, we apply this rule of construction to the provision of the act of Delaware, under which the original Wilmington and Susquehanna Railroad Company was united with the Delaware and Maryland Railroad Company, requiring the new company to pay annually into the treasury of the State a tax of one-quarter of one per cent. upon its capital stock of four hundred thousand dollars, the position of the appellant falls to the ground. That provision is not accompanied with any words indicating the intent of the Legislature that no further or different tax should not be subsequently levied.

"Had the provision in question been embodied in an independent act, no one would pretend that the designation of the amount and character of the tax carried with it any implication that the tax should remain unchanged in these particulars for all future time during the existence of the corporation. And it is not perceived how a different conclusion is warranted because the tax is designated in an independent section of the act, under which the new company was formed, instead of being designated in an independent act. As already observed, nothing can be taken from the power of the State in this respect by presumption or influence."

This case is an adjudication of the precise question which the fifth and sixth sections of the act of 26th March, 1846, present.

They certainly do not impose any tax upon gross receipts, or contain any words confining the right of the Commonwealth to any precise form or object of taxation.

5. That the acts of Assembly relied upon by plaintiff in error are grants by the public, in which nothing passes by implication.

Charles River Bridge *vs.* Warren Bridge, 11 Peters, 549; United States *vs.* Arredondo, 6 Peters, 738; Miller *vs.* St. Clair, 8 Howard, 581; Richmond R. R. Co. *vs.* Louisiana R. R. Co., 13 Howard, 81; Minot *vs.* Philadelphia, Wilmington and Baltimore R. R. Co., 18 Wallace, 206.

Of the third objection (Record, p. 3) urged by the Erie Railway Company against the right of the Commonwealth to collect from it the tax in question, it may be said:

1. The act of 1841 does not impose any tax upon the company.

2. The tax laid upon the gross receipts of this company does not violate, as we have seen, the obligation of a contract; it is not laid on imports or exports; it is not an interference with commerce or inter-State tonnage; it is not a discrimination against rights held in other States.

This court, therefore, it is respectfully urged, has no jurisdiction to inquire into its policy, purpose or effect.

The Commonwealth of Pennsylvania is not a government of enumerated powers. She possesses every attribute of sovereignty except such as she has expressly surrendered to the United States, and this surrender so far as it affects her power of taxation does not extend beyond the limitations we have specified.

Subject only to these exceptions, that the right of the Commonwealth to tax this corporation in the manner and to the extent it desires, cannot be questioned, much less restricted by this court will appear from its own decisions.

M'Culloch *vs.* Maryland, 4 Wheaton, 316.

"In America the powers of sovereignty are divided between the government of the Union and those of the States. They are each sovereign, with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other."

"The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting, the object is excepted, take upon themselves the burden of establishing that exception."

"Before we proceed to examine this argument, and to subject it to the test of the Constitution, we must be permitted to bestow a few considerations on the nature and extent of this original right of taxation which is acknowledged to remain with the States."

"It is admitted that the power of taxing the people, and their property, is essential to the very existence of the government, and may be legitimately exercised for the objects to which it is applicable, to the utmost extent to which the government may choose to carry it."

"All subjects over which the sovereign power of a State extends, are objects of taxation."

"If we measure the power of taxation residing in a State, by the extent of sovereignty which the people of a single State possess, and can confer on its government, we have an intelligible standard applicable to every case to which the power may be applied."

Lessee of Livingston *vs.* Moore, *et al.*, 7 Peters, 655.

"Every government assumes, and rightfully has, the power to take care of its own revenue; to protect it by extraordinary securities; to collect it by extraordinary remedies. Without this power, and the liberal exercise of it, the government might be thrown into ruinous embarrassments and distressing disappointments, and delays in meeting the expenses of the public service."

Insurance Company *vs.* Debolt, 16 How., 428.

"It will be admitted on all hands that, with the exception of the powers surrendered by the Constitutionof the United States, the people of the several States are absolutely and unconditionally sovereign within their respective territories. It follows that they may impose what taxes they think proper upon persons or things within their dominion, and may apportion them according to their discretion and judgment."

Bank *vs.* New York City, 2 Black, 620.

"The taxing power, so far as it is reserved to the States, and used within constitutional limits, cannot be controlled or restricted by this court; the prudence of its exercise not being a judicial question."

Witherspoon *vs.* Duncan, 4 Wallace, 210.

"It is not the province of this court to interfere with the policy of the revenue laws of the States, nor with the interpretation given to them by their courts."

Reading Railroad *vs.* Pennsylvania, 15 Wallace, 232.

"But holding this, we recognize fully the power of each State to tax, at its discretion, its own internal commerce, and the franchises, property or business of its own corporations, so that inter-State intercourse, trade or commerce be not embarrassed or restricted."

Erie Railway Company *vs.* Pennsylvania, 15 Wallace, 282.

Minot *vs.* the Philadelphia, Wilmington and Baltimore Railroad Company, 18 Wallace, 206.

"The State may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation or its separate corporate property. And the manner in which its value shall be assessed and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion. It is not for us to suggest, in any case, that a more equitable mode of assessment or rate of taxation might be adopted than the one prescribed by the Legislature of the State; our only concern is with the validity of the tax; all else lies beyond the domain of our jurisdiction."

The fourth objection is fully answered, it is believed, not merely by the argument already stated, but by the authorities which support it.

For it does but repeat the question: Do the sections which require an annual payment of $10,000, and provide for the taxing of that portion of the stock of the company which represents the cost of construction in Pennsylvania, exclude the Commonwealth from imposing any greater or different kind of taxation?

And to that question a reply has been given in the language of this court, and it is therefore *res adjudicata*.

The tax in question is not an infraction of the Constitution of the United States, as the fifth objection claims. As has been shown in the answer to the third objection, it does not discriminate against rights held in other States, nor affect the commerce and inter-State transportation, nor interfere with imports and exports, or the inviolability of contracts.

It does not, therefore, come within the prohibition of the Federal Constitution.

The case of New York and Erie Railroad Company *vs.* Sabin, 2 Casey, 242, is not as the counsel for plaintiff in error contend, in conflict with the

ruling of the Supreme Court in this case, but is in perfect harmony with it. This appears from the opinion pronounced in the case of the Erie Railway Company *vs.* Commonwealth, 16 P. F. Smith, 84.

Mr. Justice Sharswood, delivering the decision of the court, that the Erie Railway Company was subject to the annual taxation, notwithstanding the annual payment of $10,000 and the tax on stock, said: "The case of the New York and Erie Railroad Company *vs.* Sabin, 2 Casey, 242, is not, as is supposed, inconsistent with this view. It was there held that inasmuch as the State, by the act of 1846, had imposed a special tax upon the stock of the company to the extent of the costs of construction, within this Commonwealth, that necessarily implied an exemption of the work itself from taxes before imposed for State and county purposes; to hold otherwise would be to subject the same property to double taxation, which it cannot be supposed that the Legislature intended. 'If the company,' said Mr. Justice Woodward, 'should multiply buildings and accumulate lands no way appurtenant or essential to their railroad, this property would be subject to taxation like any other lands or houses; but for these erections, which are fairly included in the cost of construction of their road, they are liable to no other taxes than those specially imposed.' This was really only applying to the works of this foreign corporation, the same just rule as had been settled in the construction of the general tax laws in reference to similar works of domestic corporations."

A position advanced, for the first time, in the brief of argument for the company, to the effect that the tax in question is unconstitutional, because it applies to property beyond the jurisdiction of the State, admits of several answers.

1. That the plaintiff in error having failed to specify this objection, when taking an appeal from the account settled against it by the fiscal officers of the Commonwealth, cannot now present it for adjudication.

The first section of the act of 1811, (Pam. Laws Penna., 1811, p. 148,) which gives the right of appeal to parties aggrieved by the decision of those officers, requires the party appellant to file, *inter alia*, a "specification of objections to the said settlement."

And our courts in construing this statute, which is binding on this corporation, and by virtue of which the action of these officers was presented for judicial examination, have repeatedly decided that an objection that was not specified could not be considered. Commonwealth *vs.* Porter, 9 Harris, 388, and cases there cited.

2. This objection was not presented to and considered by either of the courts, whose decisions are here for review, and therefore ought not to be considered by this court.

3. The Erie Railway Company is subject to taxation under the laws of the Commonwealth of Pennsylvania. M'Culloch *vs.* Maryland. 4 Wheaton, 316.

4. The tax on gross receipts, which is the tax in dispute, is not in violation of the Constitution of the United States, 15 Wallace.

5. There is no contract between the Commonwealth and this company regulating or restricting the right to impose this tax upon the company.

6. When a tax is constitutional, and a corporation liable to it, "The tax may be proportioned either to the value of the franchise granted, or the extent of its exercise," 15 Wallace, 296.

7. That the Legislature is the sole judge of the extent to which a constitutional tax is to be imposed, and of the objects upon which it should rest.

8. That when a railroad is not co-terminis with the State, it is constitutional to impose a tax upon it in that proportion which the length of the road in Pennsylvania bears to the entire length of the road. Minot *vs.* Railroad, 18 Wallace, 206.

9. This tax has been thus proportioned in accordance with an unbroken usage of the accounting department of Pennsylvania, which accompanies, interprets and forms part of all her revenue laws: A custom which has been repeatedly affirmed by the decisions of her courts, and never objected to by the company.

The argument of the plaintiff in error contains some observations which are unimportant in this case.

Whether the legislation of Pennsylvania is marked by a liberal or a narrow spirit toward the Erie Railway Company; whether it will be wiser for the company, in the event of an adverse decision of this case, to climb or pierce the mountains of New York for a way to the lakes, or to continue to pass thither over the soil of the Commonwealth of Pennsylvania, are subjects which do not demand discussion, since they are not here for decision.

The questions submitted for the consideration of this honorable Court, are, it is believed, of a different order and character.

They involve the duty of determining the limits of Federal and State authority, and of deciding whether a great Commonwealth has diminished that incident of her sovereignty—her power of taxation—upon which the administration of her government, the welfare of her people, and her rank and place among her sister States vitally depend.

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